BEFORE
DISPUTE RESOLUTION BOARD

EDWIN H. BENN (Neutral Chair)
CICELY PORTER ADAMS (City Appointee)
JOHN CATANZARA, JR. (Lodge Appointee)

In the Matter of the Arbitration **between** **CITY OF CHICAGO** **("CITY")** **and** **FRATERNAL ORDER OF POLICE, CHICAGO LODGE NO. 7** **("LODGE")**	**CASE NOS.:** L-MA-18-016 AAA 01-22-0003-6534 Arb. Ref. 22.372 (Interest Arbitration)

FINAL OPINION AND AWARD

APPEARANCES:

For the City: James C. Franczek, Jr. Esq.
David A. Johnson, Esq.
Jennifer A. Dunn, Esq.

For the Lodge: Joel A. D'Alba, Esq.
Margaret A. Angelucci, Esq.

Dated: October 19, 2023

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SYNOPSIS

This is an interest arbitration under authority of the Illinois Public Labor Relations Act ("IPLRA") setting the terms of the parties' successor collective bargaining agreement to the contract which expired June 30, 2017.

Through use of a mediation and arbitration process ("med-arb") where the Neutral Chair of this Board acted as both a mediator and an arbitrator, the parties have now agreed upon all terms for their successor Agreement, with the exception of a proposal made by the Lodge concerning arbitration of protests to certain disciplinary actions. The parties' negotiated agreements for the many agreed-upon provisions of their new Agreement are attached to this Award as an appendix and are incorporated into this Award.

Prior to the negotiations for this Agreement, protests over disciplinary actions given to police officers in excess of 365 days and separations (dismissals) were heard exclusively by the Chicago Police Board. For the new Agreement, the Lodge proposed that it be given an option to arbitrate grievances protesting those disciplinary actions. The City did not agree to that proposal.

By Interim and Supplemental Interim Awards dated June 26, 2023 and August 2, 2023, respectively, the Lodge's proposal to have the option to arbitrate grievances for that class of cases was adopted by a majority of this Dispute Resolution Board appointed by the parties to hear this case. The City Member of this Board dissented.

This Opinion and Award incorporates the parties' total agreements for the new contract and further addresses the issue concerning arbitration of grievances protesting disciplinary actions in excess of 365 days and separations which issue was previously decided by this Board. The necessity for issuing this Award further discussing the arbitration provisions previously decided by a majority of this Board was deemed necessary by me in my capacity as the Neutral Chair of this Board because of some public reaction to the prior awards which, in my opinion, showed a misunderstanding of the arbitration process or a desire to dismantle that process – a process that has long been the statutory requirement in the State of Illinois as well as the public policy of this state and at the federal level.

First, Section 8 of the IPLRA requires that unless agreed otherwise, final and binding arbitration of disputes must be a term in the collective bargaining agreements covering police officers, firefighters and security employees [emphasis added]:

> **Sec. 8. Grievance Procedure.** The collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall provide for final and binding arbitration of disputes concerning the*

> *administration or interpretation of the agreement unless mutually agreed otherwise. ....*

Second, long and well-settled case law in Illinois developed in interest arbitration decisions issued by this Neutral Chair (going back to 1990) and many other arbitrators has established that if a party requests arbitration of discipline in an interest arbitration proceeding, that party is entitled under Section 8 of the IPLRA to have final and binding arbitration of discipline adopted as a contract term. There are 17 published interest arbitration cases upholding the right to have binding arbitration in collective bargaining agreements (and there are more).

Third, under collective bargaining agreements for police officers (who are prohibited from striking), final and binding arbitration is the policy of this state as provided in Section 2 of the IPLRA [emphasis added]:

> **Sec. 2. Policy**. ... To prevent labor strife and to protect the public health and safety of the citizens of Illinois, *all collective bargaining disputes* involving persons designated by the Board as performing essential services and those persons defined herein as security employees *shall be submitted to impartial arbitrators*, who shall be authorized to issue awards in order to resolve such disputes. *It is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act.* To that end, the provisions for such awards *shall be liberally construed.*

Fourth, Section 15 of the IPLRA is a supremacy clause negating any statutes or ordinances that deny or limit final and binding arbitration as sought by the Lodge:

> **Sec. 15. Act Takes Precedence.**
>
> * * *
>
> (b) Except as provided in subsection (a) above [not relevant for the final and binding arbitration issue], *any collective bargaining contract between a public employer and a labor organization executed pursuant to this Act shall supersede any* contrary statutes, charters, *ordinances*, rules or regulations relating to wages, hours and conditions of employment and employment relations adopted by the public employer or its agents.

Fifth, the Illinois Constitution now provides for the protection of workers' rights, which includes the statutory right of police officers to have final and binding

arbitration as sought by the Lodge and prohibits any ordinances passed or in existence which deny or limit that right [emphasis added]:

> **SECTION 25. WORKERS' RIGHTS**
>
> (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. *No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment* and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.

Therefore, as argued by the Lodge and as ordered by the Interim and Supplemental Interim Awards, a majority of the Dispute Resolution Board adopted the Lodge's position that for grievances protesting disciplinary actions in excess of 365 days and separations (dismissals) issued to police officers, the Lodge can have the option to have those grievances heard and decided in final and binding arbitration rather than by the Police Board.

Arbitration proceedings are private. The practice of the parties for arbitrations of grievances for disciplinary actions between 11 and 365 days is that those proceedings are private and not open to the public. There is no reason that the same practice should not apply to arbitration proceedings for grievances protesting discipline in excess of 365 days and dismissals. Unless allowed by the arbitrator hearing a specific case and at the request of either the City or the Lodge, the arbitration proceedings are private between the City and the Lodge because they are the parties to the collective bargaining agreement and therefore those proceedings are not open to the public. That privacy of arbitration proceedings is also consistent with and required by ethical obligations imposed on arbitrators by the American Arbitration Association and the National Academy of Arbitrators to preserve the privacy of arbitrations.

Further and again consistent with the practice of the parties for disciplinary actions between 11 and 365 days issued to officers and the legal presumption of innocence until proven otherwise, for officers who are subject to discipline in excess of 365 days and separations, those officers shall also remain on the payroll until the disciplinary actions are resolved through arbitration.

Objections have been raised by some that my prior rulings concerning arbitration of discipline are inconsistent with a belief that arbitration proceedings are somehow improper because the proceedings are held "behind closed doors" thereby

preventing transparency and hindering a desire for police reform. The argument that arbitrations of discipline of police officers should be prohibited or limited because they are conducted "behind closed doors" relies upon slogans and catch phrases. Slogans and catch phrases such as "behind closed doors" do not determine outcomes in these interest arbitration proceedings. The "Rule of Law" quoted above and further described in detail below determines the result in this case.

The Lodge's proposal on arbitration was therefore adopted as found by the Interim and Supplemental Interim Awards.

The results in this case – the parties' negotiated terms coming from the med-arb process which have been incorporated into this Award and the arbitration provisions previously decided by this Board which end an over six-year labor dispute between the City and the Lodge – now go to the City Council for ratification. With this Final Award, the arbitration provisions have now been decided three times. Should the City Council decline to ratify and if the dispute comes back to this Board for consideration of any objections raised by the City Council, this Board is obligated to consider the City Council's objections – which we will do. However, the arbitration dispute has now been decided three times in this process. The parties can therefore rationally assess the outcome of any further proceedings before this Board.

Should ratification not be obtained and litigation instituted, not only will this already remarkably prolonged labor dispute be further prolonged to the detriment of all involved (including the citizens of the City), but in light of decided law requiring great deference be given by the courts to interpretations of arbitrators chosen by the parties to resolve disputes, prolonged litigation will, in the end, prove futile.

This remarkably long labor dispute must now come to an end.

I. BACKGROUND

This is an interest arbitration proceeding between the City and the Lodge under the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq*. ("IPLRA") to the extent adopted by the parties' collective bargaining agreement ("Agreement") in Section 28.3 to complete the terms of the parties' successor Agreement to their prior 2012-2017 Agreement which expired June 30, 2017 and covers full-time sworn police officers below the rank of sergeant.

The history and procedural background of this proceeding are described in Interim and Supplemental Interim Awards previously issued on June 26, 2023 and August 2, 2023, respectively.[1]

The Interim and Supplemental Interim Awards adopted two of the Lodge's proposals for the Successor Agreement – only one of which remains relevant for discussion in this Award.[2] The relevant issue that will be discussed in this Award is the Lodge's proposal which was adopted concerning arbitration of grievances protesting disciplinary actions in excess of 365 days and separations (dismissals):

> The ability of the Lodge to have the option to have certain grievances protesting discipline given to officers in excess of 365-day suspensions and separations (dismissals) decided by an arbitrator in final and binding arbitration or by the Police Board as opposed to the current procedure of having all such disciplinary actions decided by the Police Board.

Prior to my involvement in this proceeding, the parties negotiated a number of changes to their 2012-2017 Agreement which were ratified by the Chicago City Council on September 14, 2021 (referred to by the parties as "Phase I").[3] At the

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[1] The Interim Award is posted at:
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016_Interim_Award.pdf
The Supplemental Interim Award is posted at:
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016_Supp_award.pdf

[2] Aside from the arbitration provisions, the Interim and Supplemental Interim Awards adopted a retention bonus proposal made by the Lodge:

> That officers who have served more than 20 years should receive an annual retention bonus of $2,000 payable on September 1st of each year of service after the completion of the 20th year of service.

As shown by the negotiated terms of the parties' agreements attached to the Appendix of this Award, during the mediation process which followed issuance of the Interim and Supplemental Interim Awards, the parties agreed to negate the ordered retention bonus for officers serving more than 20 years and provided a monetary stipend for all bargaining unit members. That agreement has been adopted into this Award.

[3] City Exhibit 1.
https://www.civicfed.org/sites/default/files/o2021-3449.pdf

commencement of this proceeding ("Phase II"), there were numerous issues that remained in dispute, which, after consultation with the parties, caused me to issue a Scheduling Order dated October 31, 2022 which established a process to govern the orderly development of a record for presentation and resolution of those many issues.[4]

In addition to a hearing process, the Scheduling Order also provided for mediation. However, mediation under the Scheduling Order was different from typical mediation in that by acting as mediator I did not just transmit offers and counter-offers and attempt to persuade the parties to settle. Because the Scheduling Order established a procedure for developing a complete record prior to the mediation step with identification of issues, submissions of final offers, along with filing of briefs and reply briefs – I had the ability and authority at the mediation step to advise the parties which proposals were likely to be granted or denied in the event further hearing proceedings under the Scheduling Order were required. This type of mediation with my functioning as the mediator *and* Neutral Chair arbitrator in this case is known as a "med-arb" – mediation *and* arbitration. This type of mediation process is not just designed to *persuade* parties to settle, but is designed to *force* parties to settle because under the med-arb process the parties know going into the hearing and decision process which follows mediation whether their positions are likely to finally prevail. Thus, if the parties are told by me that specific offers will be rejected but there is still desire by one or both parties to pursue certain offers, the parties must negotiate for

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[4] As of the mediation step in the Scheduling Order, the parties had developed a voluminous record which contained:

- 15 issues identified by the City;
- 17 areas of issues with over 50 sub-issues identified by the Lodge;
- Final offers with appendices submitted by the City;
- 32 pages of final offers submitted by the Lodge;
- A 66-page Pre-Hearing Brief submitted by the City with an appendix and 43 exhibits;
- A 270-page Pre-Hearing Brief submitted by the Lodge with 110 exhibits;
- A 21-page Reply Brief submitted by the City with 13 more exhibits; and
- A 71-page Rebuttal Brief submitted by the Lodge with 10 more exhibits.

their proposals because they will not be prevailing on those issues through the interest arbitration process.

During the mediation process and in making my determinations on the merits of the parties' offers, I followed the rules that are applied in interest arbitration proceedings which emphasize that interest arbitration is a *very* conservative process which frowns upon breakthroughs and requires that changes to the *status quo* sought by one party are only allowed if the party seeking the change can show that the existing condition is broken (*i.e.*, "good ideas" are not good enough.) *See* Interim Award at 16-18 describing those rules.

Following those rules, I advised the parties during the mediation process that with the exception of several areas in dispute which I believed deserved discussion, the parties' specific offers would be rejected because those offers fell into categories of breakthroughs (with no showing that the existing *status quo* was broken); good ideas (which are not good enough to justify a change); issues that were really disputes that could be resolved through the grievance and arbitration process which, if meritorious, could be remedied given the broad remedial authority of grievance arbitrators; management rights; or potentially permissive subjects of bargaining – all of which are not issues that are resolved through the conservative interest arbitration process.

The parties clearly understood the message. After being told "no" at the commencement of the mediation step on the vast majority of their remaining proposals, the parties negotiated to agreement or dropped many of the proposals that I indicated they would not achieve through further proceedings before this Board. The parties also negotiated on other topics that were not specific proposals in this matter, again reaching agreements.

The med-arb process worked. With the exception of handling the previously awarded right to arbitration of grievances protesting discipline in excess of 365 days and separations (dismissals) *all* remaining issues were resolved by the parties or dropped. The tentative agreements are attached to this Award as an Appendix and incorporated into this Award.

II. ARBITRATION OF PROTESTS TO DISCIPLINARY ACTIONS IN EXCESS OF 365 DAYS AND SEPARATIONS (DISMISSALS)

While the parties were able to agree upon many items for their new Agreement, the City did not agree with my Interim and Supplemental Interim Awards ordering that the Lodge have the option to present grievances protesting suspensions in excess of 365 days and separations (dismissals) to final and binding arbitration instead of having the Police Board decide those disciplinary actions. Interim Award at 43-70; Supplemental Interim Award at 12-27. In their Tentative Agreements at par. 21, the parties provided that "Arbitrator Benn's Interim Award with respect to the issue of the Police Board and Arbitration will be submitted to the City Council."

Although the arbitration issue has been decided in the Lodge's favor by the Interim and Supplemental Interim Awards, I offer this further explanation for the City Council's benefit as this dispute now moves to the City Council for ratification.

A. "Behind Closed Doors"

Publicly, those objecting to my ordering final and binding arbitration for these disciplinary actions have used an argument that arbitrations are inappropriate for disciplinary actions in excess of 365 days and dismissals because those proceedings are conducted "behind closed doors". *See* The Chicago Sun-Times (September 14, 2023) [all italicized emphasis mine]:[5]

[5] https://chicago.suntimes.com/2023/9/14/23873944/chicago-city-council-reject-ruling-serious-police-misconduct-out-public-view

> **City Council members urge colleagues to reject ruling that would keep serious police misconduct hearings out of public view**
>
> Several members of the City Council urged colleagues Thursday to reject a controversial ruling that would allow cops to have the most serious disciplinary cases decided ***behind closed doors*** — joining a chorus of critics who warn the move will erode transparency and community trust.
>
> Independent arbitrator Edwin Benn ruled in June that officers facing dismissal or suspensions over a year could opt to move their proceedings to arbitration instead of going before the Chicago Police Board.
>
> * * *

See also, The Chicago Tribune (September 17, 2023):[6]

> **Chicago aldermen, activists call for city to keep police hearings public**
>
> Several progressive aldermen and activists have joined a growing list of critics calling for the Chicago City Council to reject an arbitrator's ruling that would allow Chicago police officers accused of serious misconduct to have their disciplinary cases decided ***behind closed doors***.
>
> * * *
>
> Earlier this year, as part of the ongoing contract negotiations between the Fraternal Order of Police and the city, an arbitrator ruled that CPD officers accused of the most serious misconduct should have the option to have their cases decided by the Chicago Police Board or an independent third party. If an officer chose the latter, the hearings would be conducted ***behind closed doors*** and not open to the public.
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> * * *

And on September 21, 2023, the Chicago Sun-Times published an editorial:[7]

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[6] https://www.chicagotribune.com/news/criminal-justice/ct-fop-city-council-20230917-qfas7r5fybeknm5o2oa4nowihu-story.html

[7] https://chicago.suntimes.com/2023/9/21/23883009/chicago-police-arbitration-firings-suspensions-discipline-secret-police-board-editorial

> **Chicago police facing serious discipline should not have cases decided in secret**
>
> **The City Council should reject a ruling by an arbitrator that would allow police officers facing firings or long suspensions to dodge the Chicago Police Board and move cases to arbitration — outside public view.**
>
> The City Council will vote on a ruling by an arbitrator that would allow police officers to dodge the Chicago Police Board for the most serious disciplinary cases and move them to arbitration.
>
> The Chicago Police Department still is a long way from gaining the trust of many Chicagoans.
>
> So it would be a mistake for the City Council to accept a ruling by an arbitrator that would allow police officers to dodge the Chicago Police Board for the most serious disciplinary cases, by moving them to arbitration.
>
> We're talking about officers facing firings or suspensions longer than a year whose cases would be decided ***behind closed doors***, out of public view.
>
> * * *

"Behind closed doors" is a slogan – a catch phrase (perhaps, even the creation of a public relations effort) designed to defeat arbitration as a dispute resolution process.

Slogans and catch phrases that attempt to simplify complex and divisive issues have been rightfully criticized. *See* Thomas A. Bailey, "Voices of America The Nation's Story In Slogans, Sayings, and Songs" (Macmillan Publishing Co., The Free Press, 1976) at viii, 501-502:

> Slogans are comforting shorthand for thinking, which is usually avoided as hard work; and for this reason they are open to criticism. Even so, they are an essential part of the nation's history.
>
> * * *
>
> ... Catch phrases are undoubtedly foes of sober reasoning; they implant the comfortable but illusory feeling that the user is thinking when only mouthing. ...

> Catch phrases are almost invariably one-sided, with little or no room for qualifiers or argument. They often contain untruths or half truths, such as "Guns don't kill people; people kill people." Some slogans not only serve as drugs for the brain but also as opiates for the conscience, notably when "Remember Pearl Harbor" rendered more righteous the dropping of two atomic bombs on Japan.
>
> Slogans also encourage voters to think with their lungs ....[8]

For purposes of this case, the phrase "behind closed doors" has added meaning to those of us who have grown up, lived or worked in Chicago as that expression gives the image of smoke-filled closed rooms of the past with politicians, criminals and the powerful cutting deals to line their own pockets without regard to rights of ordinary citizens.

However, no matter how attractive the simplistic phrase "behind closed doors" may seem to those who do not understand or seek to defeat the arbitration process for police officers, that phrase and the illusions it conjures cannot succeed to defeat the Lodge's contract proposal for binding arbitration in this case and my prior awards adopting that proposal. That is because there is a more powerful and accurate "truth" in a phrase that is the bedrock of our democracy which washes away that simplistic "behind closed doors" expression along with its images of shady and secretive deal-making in smoke-filled rooms. And that phrase is the most relevant (especially these days) – "The Rule of Law."

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[8] *See also*, Newsome, "The Use of Slogans in Political Rhetoric," The Corinthian, Vol. 4, Article 3 (2022) citing Bailey.
https://kb.gcsu.edu/cgi/viewcontent.cgi?article=1203&context=thecorinthian

B. "The Rule Of Law"

1. Arbitration Of Discipline Grievances As A Right Under The Rule Of Law

A basic dictionary definition tells us what "The Rule of Law" is:[9]

> ... The rule of law, sometimes called "the supremacy of law", provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application.

My decision to order an option for the Lodge for arbitration of grievances challenging discipline of greater than 365 days and dismissals issued to police officers strictly follows "The Rule of Law".

First, Section 8 of the Illinois Public Labor Relation Act requires, *as a matter of statute*, "final and binding arbitration of disputes" in collective bargaining agreements for police officers [emphasis added]:

> **Sec. 8. Grievance Procedure.** The collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise*. ....

While in the past, the parties "mutually agreed otherwise" to not have arbitration for this class of cases, in this case the Lodge has no longer "agreed otherwise" and made a contract proposal to extend the existing arbitration provisions in the prior Agreement (grievances protesting disciplinary actions between 11 and 365 days) to include disciplinary actions greater than 365 days and separations (dismissals). Therefore, under Section 8 of the IPLRA, "The Rule of Law" requires that if the Lodge

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[9] Black's Law Dictionary (West, 5th ed.).

proposes an option to take grievances protesting discipline in excess of 365 days and dismissals, "final and binding arbitration of disputes" *must,* consistent with that proposal, be placed into the parties' Agreement for these cases that in the past would have gone to the Police Board for decision. In accord with the mandate in Section 8 of the IPLRA, that is how I ruled – a ruling joined in by the Lodge's Member of this Board thereby constituting a majority decision of the Board.

Second, the IPLRA has a supremacy clause giving Section 8's mandate for final and binding arbitration as a contract term supremacy over laws and ordinances to the contrary. Section 15(b) of the IPLRA states [emphasis added]:

> **Sec. 15. Act Takes Precedence.**
>
> * * *
>
> (b) Except as provided in subsection (a) above [not relevant for the final and binding arbitration issue], *any collective bargaining contract between a public employer and a labor organization executed pursuant to this Act shall supersede any* contrary statutes, charters, *ordinances*, rules or regulations relating to wages, hours and conditions of employment and employment relations adopted by the public employer or its agents. ...

The City therefore cannot rely upon any ordinances it has that provide for this class of cases to be decided by the Police Board. The requirement for final and binding arbitration of disputes found in Section 8 of the IPLRA "Takes Precedence."

Third, the IPLRA states a public policy requiring final and binding arbitration as I ordered in this case:

> **Sec. 2. Policy**. ... To prevent labor strife and to protect the public health and safety of the citizens of Illinois, *all collective bargaining disputes* involving persons designated by the Board as performing essential services and those persons defined herein as security employees *shall be submitted to impartial arbitrators*, who shall be authorized to issue awards in order to resolve such

> disputes. *It is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act*. To that end, the provisions for such awards *shall be liberally construed*.

Arbitration of disputes as public policy in Illinois as stated in Section 2 of the IPLRA follows the long-held similar federal policy. *See e.g.*, *United Steelworkers of America v. Warrior & Gulf Navigation Co*., 363 U.S. 574, 578 (1960) [footnotes and citation omitted]:

> ... The present federal policy is to promote industrial stabilization through the collective bargaining agreement. ... A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement.

The Illinois Supreme Court states that "... Illinois public policy is shaped by our statutes, through which the General Assembly speaks." *State of Illinois v. American Federation of State, County and Municipal Employees*, 51 N.E.3d 738, 747 (2016). Through Sections 2 and 8 of the IPLRA requiring arbitration of disputes for the officers in this case, the General Assembly has clearly spoken. In this interest arbitration, I can take note of the General Assembly's policy concerning the requirement for final and binding arbitration.

Fourth, the case law developed since the passage of the IPLRA issued by this arbitrator and other arbitrators has followed the mandate of Section 8 of the IPLRA that if, as here, a party requests arbitration of discipline in an interest arbitration, as a matter of plain statutory language in Section 8 and Section 2, that request *must* be adopted and that adoption is required even if boards of police commissioners similar to the Police Board deciding disciplinary matters have long been part of the parties' collective bargaining agreements or relationships. Further, whether those

boards functioned well or did not function at all is just not a relevant consideration under Section 8's statutory mandate requiring final and binding arbitration of disputes in collective bargaining agreements. That is because the language in Section 8 that collective bargaining agreements "... shall contain a grievance resolution procedure which shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise" leaves nothing to discretion. *See Village of Bartlett and Metropolitan Alliance of Police*, S-MA-21-145 (Benn, 2023) at 6-10;[10] *Village of River Forest and FOP*, S-MA-19-132 (Benn, 2021) at 4-8;[11] *Village of Maywood and Illinois Council of Police*, S-MA-16-119 (Benn, 2017) at 2;[12] *Village of Lansing and FOP,* S-MA-04-240 (Benn, 2007) at 16-21;[13] *City of Highland Park and Teamsters Local 714*, S-MA-219 (Benn, 1999) at 9-12;[14] *City of Springfield and PBPA, Unit* 5, S-MA-89-74 (Benn, 1990) at 1-5;[15] *Will County Board and AFSCME*, S-MA-009 (Nathan, 1988) at 56, 64-65;[16] *City of Markham and Teamsters Local 726*, S-MA-89-39 (Larney, 1989);[17] *Calumet City and FOP,* S-MA-99-128 (Briggs, 2000) at 13-16 (2000);[18] *City of Elgin and PBPA*, S-MA-00-102 (Goldstein, 2001) at 66-72;[19] *City of Markham and Teamsters Local 726,* S-MA-01-232

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[10] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/S-MA-21-145_arb_award.pdf

[11] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-19-132-arb-award.pdf

[12] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-16-119-02arbaward.pdf

[13] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-04-240.pdf

[14] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-98-219.pdf

[15] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-89-074.pdf

[16] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-88-009.pdf

[17] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-89-39.pdf

[18] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-99-128.pdf

[19] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-00-102.pdf

(Meyers, 2003) at 14-15;[20] *Village of Shorewood and FOP*, S-MA-07-199 (Wolff, 2008);[21] *Village of Western Springs and MAP*, S-MA-09-99 (Meyers, 2010) at 63-66;[22] *Village of Montgomery and MAP*, S-MA-10-156 (Camden, 2011) at 26;[23] *Village of Maryville and FOP*, S-MA-10-228 (Hill, 2011) at 10-12;[24] *Village of Oakbrook and FOP*, S-MA-09-017 (McAlpin, 2011) at 13-19;[25] *Village of Bolingbrook and MAP*, FMCS No. 101222-01003-A (Newman, 2011) at 9-10.[26]

The fact that an "option" for the Lodge to choose whether grievances protesting disciplinary actions of greater than 365 days and dismissals should go to arbitration does not change the result. *See e.g., River Forest, supra* at 3-4; *Village of Maywood, supra* at 2; *Village of Lansing, supra* at 17-18; *City of Highland Park, supra* at 9-10; *City of Springfield*, *supra* at 1-2; *Will County Board, supra* at 15, 44, 65-66; *City of Markham (Larney award), supra* at 5, 19; *Calumet City, supra* at 18; *City of Markham (Meyers award), supra*; *Village of Shorewood, supra*; *Village of Western Springs, supra* at 63; *Village of Maryville, supra* at 10-12; *Village of Bollingbrook, supra* at 10, footnote 2.

Fifth, I recognize that, typically, arbitrators do not interpret constitutional issues because that is a function for the courts.[27] However, in this case I can take notice of constitutional rights of employees because Section 14(h)(1) of the IPLRA provides

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[20] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-01-232.pdf

[21] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-07-199.pdf

[22] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-019.pdf

[23] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-156.pdf

[24] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-228.pdf

[25] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-017.pdf

[26] https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/101222-01003-a.pdf

[27] *Alexander v. Gardner-Denver, Co.,* 415 U.S. 36, 57 (1974) ("... the resolution of statutory or constitutional issues is a primary responsibility of courts ....").

that in resolving interest arbitration disputes, an "applicable" factor is "[t]he lawful authority of the employer."

The recently adopted "Workers' Rights" amendment to the Illinois Constitution provides [emphasis added]:[28]

ARTICLE I
BILL OF RIGHTS

* * *

> **SECTION 25. WORKERS' RIGHTS**
>
> (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. *No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment* and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.

Police officers are "employees" having rights under the Workers' Rights provisions of the Constitution. Those "rights" include the statutory mandate compelling arbitration of discipline as ordered in this case which rights are found in Sections 8 and 2 of the IPLRA.

For the City to rely upon City ordinances that conflict with the statutory right of police officers under Sections 8 and 2 of the IPLRA to have in their collective bargaining agreement an option for the Lodge to take this class of cases to final and binding arbitration is therefore also prohibited by the above provisions of the Illinois Constitution. Given the statutory requirements in Sections 8 and 2 of the IPLRA and

[28] https://www.ilga.gov/commission/lrb/con1.htm

the supremacy clause in Section 15 of the IPLRA requiring final and binding arbitration and the applicable factor under Section 14(h)(1) of the IPLRA that I can consider "[t]he lawful authority of the employer", the above-quoted provision of the Illinois Constitution precludes the City from relying upon its ordinances that require this class of cases to be decided by the Police Board as opposed to final and binding arbitration before arbitrators.

2. The Privacy Of Arbitration

Arbitrations are private and not open to the public. That again is "The Rule of Law."

Unless agreed otherwise, it has long been held that "[a]rbitration is, however, a private proceeding which is generally closed to the public." *Hoteles Condado Beach etc. v. Union De Tronquistas Local 901*, 763 F.2d 34, 39 (1st Cir. 1985) [with the court citing Elkouri and Elkouri, *How Arbitration Works*, (3rd ed. 1973) at 202]. *How Arbitration Works* (BNA, 5th ed.) at 338-339 explains [footnotes omitted]:

> **Privilege to Attend Hearing**
>
> Arbitration is a private proceeding and the hearing is not, as a rule, open to the public. However, all persons having a direct interest in the case ordinarily are entitled to attend the hearing. Other persons may attend with permission of the arbitrator or the parties. ...

As required by the parties' Agreement at Section 28.3(B), this is a case decided under the auspices of the American Arbitration Association ("AAA"). The AAA Rules follow the requirement that arbitration hearings are not open to the public. *See* AAA Rule 21 ("The arbitrator and the AAA shall maintain the privacy of the hearing unless the law provides to the contrary").[29]

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[29] https://www.adr.org/sites/default/files/Labor_Arbitration_Rules_3.pdf

The obligation to maintain privacy is an ethical obligation on the part of arbitrators serving in AAA proceedings. Indeed, without agreement of the parties to make these arbitration proceedings public, for me to order that arbitration proceedings be open to the public is an ethical violation on my part as imposed by the AAA. *See* the AAA Statement of Ethical Principles:[30]

> **Confidentiality**
>
> - An arbitration proceeding is a private process. In addition, AAA staff and AAA neutrals have an ethical obligation to keep information confidential. However, the AAA takes no position on whether parties should or should not agree to keep the proceeding and award confidential between themselves. The parties always have a right to disclose details of the proceeding, unless they have a separate confidentiality agreement. Where public agencies are involved in disputes, these public agencies routinely make the award public.

Consistent with this principle, the privacy of arbitration proceedings is also part of the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators (of which I am a member and therefore bound by its Code of Professional Responsibility):[31]

> **2. Responsibility to the Parties**
>
> * * *
>
> **C. Privacy of Arbitration**
>
> All significant aspects of an arbitration proceeding must be treated by the arbitrator as confidential unless this requirement is waived by both parties or disclosure is required or permitted by law.

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[30] https://www.adr.org/StatementofEthicalPrinciples - :~:text=An arbitration proceeding is a,and award confidential between themselves.

[31] https://naarb.org/code-of-professional-responsibility/

> **a.** Attendance at hearings by persons not representing the parties or invited by either or both of them should be permitted only when the parties agree or when an applicable law requires or permits.
> ...

I have no intention of committing an ethical violation because of the unwarranted use of the slogan and catch phrase "behind closed doors" by those who oppose arbitration.

The City points to no law requiring that arbitration proceedings be open to the public. The City's pointing to rules of the Police Board[32] does not rise to a "law" requiring that these arbitration proceedings be open to the public. Section 8 of the IPLRA and the Interim Award have removed the Police Board from the discipline process should the Lodge exercise its right to progress grievances protesting suspensions in excess of 365 days or separations to arbitration. The City cannot rely upon a provision of a process (*i.e.,* the Police Board's procedures) which has been eliminated from the dispute resolution procedure for a case to justify its position that a "law" exists requiring the arbitration be open to the public. Either party is obviously free to request an arbitrator in an individual case to open the proceedings to the public. But unless agreed otherwise, there can be nothing in the parties' collective bargaining agreement that requires such a result. If there is any doubt about whether the Police Board's requirement must be adopted for arbitration hearings, again, Section 15 (Act Takes Precedence) of the IPLRA provides, in pertinent part, that "... the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control."

Further, the Lodge points out that "... the parties' past practice" is that "arbitration proceedings under this collective bargaining agreement shall be private and

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[32] City Comments on Language Proposals at 6-8.

not open to the public."[33] The City has not disputed that assertion. Therefore, for discipline up to 365 days, nothing in the Agreement or the practice of the parties requires having those hearings open to the public. If that is the case, why should a grievance over discipline of 366 days (or more) be open to the public when the past practice of the parties has been that arbitrations for significant disciplinary actions have not been open to the public? The Interim and Supplemental Interim Awards merely extended the IPLRA's statutory right for arbitration to include an option for grievances protesting disciplinary actions in excess of 365 days and separations to the parties' already existing arbitration process for protesting disciplinary actions – that's all. There is no reason to change the practice for hearings being open to the public for the extended right of arbitration for certain cases when that practice did not previously exist.

3. The Right To Remain On The Payroll

Under the parties' Agreement, Appendix Q(C) provides (with exceptions not relevant here) that for grievances challenging suspensions from between 11 and 365 days, "... the Officer will not be required to serve the suspension, nor will the suspension be entered on the Officer's disciplinary record, until the Arbitrator rules on the merits of the grievance." That same provision is found in Sections 9.6((B) and (C) of the Agreement as those sections refer to the procedure in Appendix Q(C) which does not require the officer to go into a non-pay status.

As discussed, the extension of the statutory right of arbitration for grievances protesting discipline for suspensions in excess of 365 days and separations is merely an extension of the right to arbitrate the class of cases involving discipline between 11 and 365 days as provided in the Agreement. Focusing particularly on Appendix Q

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[33] Lodge Final Offers on language submitted July 13, 2023 at 1.

as currently written which explicitly provides that disciplinary actions falling under those provisions do not require the officer be put in non-pay status prior to decision by an arbitrator on the grievance, there is no reason to deviate from the practice agreed to by the parties for the lesser disciplinary actions. The line drawn by the City at 365 days as to whether an officer is suspended without pay and kept on the payroll is not reasonable. Why should an officer who is suspended for 365 days remain on the payroll until the arbitration is decided and the officer who is suspended for 366 days be put in non-pay status until that officer's arbitration is decided? There is no rational basis for such a line drawing.

Another bedrock "Rule of Law" is "the presumption that a defendant is innocent until proven guilty." *People of the State of Illinois v. Wheeler*, 871 N.E.2d 728, 748 (2007). As discussed, the parties have adopted a practice for proposed disciplinary actions against an officer less than 365 days of keeping that officer on the payroll until the disciplinary action is adjudicated and there is no rational basis to change that practice because an officer is facing a potential disciplinary action greater than 365 days and dismissal. That practice for officers facing disciplinary actions less then 365 days recognizes "the presumption that a defendant is innocent until proven guilty." To place officers in non-pay status for proposed disciplinary actions greater than 365 days and dismissals throws that presumption of innocence out the window. While arbitrators have broad remedial powers including awarding lost backpay and damages and other financial harm that is a direct or foreseeable consequence of a disciplinary action that lacks just cause, an officer being out of work until a case is decided can never be fully rectified – particularly given the stress placed on officers and their families as they suddenly have lost income.

If there is a concern that an officer has committed sufficiently serious misconduct to warrant a suspension greater than 365 days or dismissal and therefore should

not be compensated while the officer's alleged misconduct is investigated, there is an obvious simple answer for that concern. And that is for the City to timely investigate the matter and get the case in front of an arbitrator for decision.

4. Retroactivity

For purposes of retroactivity, on September 14, 2022, I was notified by the American Arbitration Association that I was selected as the Neutral Chair of the Board. It was at that time that the three-member Dispute Resolution Board was composed and had authority to act. Given the Lodge's demand for interest arbitration which the record shows was held in abeyance by the Lodge, it cannot be found that the City was solely responsible for the delays in getting this case before me for decision.[34] Under the circumstances, the retroactivity date for the arbitration provision shall therefore be concurrent with the date that this Board had authority to act – September 14, 2022.

III. THE FEDERAL COURT CONSENT DECREE

The Federal Court Consent Decree (*State of Illinois v. City of Chicago* (17-cv-6260 (N.D. Ill.))[35] carves out collective bargaining agreements and interest arbitrations such as this proceeding from coverage by the Consent Decree as follows [emphasis added]:

> 711. Nothing in this Consent Decree is intended to (a) alter any of the CBAs [collective bargaining agreements] between the City and the Unions; or (b) impair or conflict with the collective bargaining rights of employees in those units under the IPLRA. Nothing in this Consent Decree shall be interpreted as obligating the City or the Unions to violate (i) the terms of the

[34] The Lodge began the interest arbitration process on October 25, 2019 and then held that process in abeyance as of May 12, 2020. Lodge Pre-Hearing Brief at 41, footnote 18.

[35] City Exhibit 5, posted at: https://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf

> CBAs, including any Successor CBAs resulting from the negotiation process (including Statutory Impasse Resolution Procedures) mandated by the IPLRA with respect to the subject of wages, hours and terms and conditions of employment unless such terms violate the U.S. Constitution, Illinois law or public policy, or (ii) any bargaining obligations under the IPLRA, and/or waive any rights or obligations thereunder. *In negotiating Successor CBAs and during any Statutory Resolution Impasse Procedures, the City shall use its best efforts to secure modifications to the CBAs consistent with the terms of this Consent Decree, or to the extent necessary to provide for the effective implementation of the provisions of this Consent Decree.*

As discussed in the Interim Award, the Supplemental Interim Award and this Award, these proceedings and the final successor collective bargaining agreement to the 2012-2017 Agreement obviously fall under the carve-out provisions specified in Paragraph 711 of the Consent Decree. Given the City's proposals and strenuous advocacy for those proposals (although not always successful), clearly, any objective observer to this process must conclude that the City met its obligations under Paragraph 711 – *i.e.*, that "the City shall use its best efforts to secure modifications to the CBAs consistent with the terms of this Consent Decree, or to the extent necessary to provide for the effective implementation of the provisions of this Consent Decree" as required by the Consent Decree.

IV. WHAT HAPPENS NEXT?

The entire negotiated package including the Interim and Supplemental Interims Awards adopting an option for the Lodge to progress grievances protesting discipline greater than 365 days and dismissals to arbitration rather than having the Police Board decide those cases are all incorporated into this Award and that package now goes to the City Council for ratification. Should the City Council reject the terms of this Award establishing the parties' successor Agreement to the 2012-2017 Agreement and the matter is returned to this Board based on objections to the arbitration

requirement, given that the arbitration provisions have now been determined and discussed on three occasions, the parties can rationally assess the outcome of this Board having to reconsider its prior rulings – but we will listen to and consider those objections (and any other objections the City Council may have).

The parties have adopted the statutory impasse procedure under the IPLRA as a matter of contract. Section 14(p) of IPLRA allows parties to collective bargaining agreements falling under Section 14's impasse resolution procedures to agree to alternative methods of resolving disputed issues in interest arbitration ("Notwithstanding the provisions of this Section [14] the employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms and conditions of employment to an alternative form of impasse resolution."). In Section 28.3(B)(11) of the Agreement, the parties have chosen *as a matter of contract* to resolve their disputes through such an alternative method. While the parties have adopted portions of the IPLRA as part of their contractual impasse resolution procedure, this interest arbitration is really a quasi-contractual and statutory process. And as to court review of contractual interpretations made by an arbitrator, review is quite limited. *See e.g., Brotherhood of Locomotive Engineers and Trainmen v. Union Pacific Railroad Co.*, 707 F.3d 791, 796 (7th, Cir. 2013) [quoting *Hill v. Norfolk & Western Ry.*, 814 F.2d 1192, 1194-95 (7th Cir. 1987)]:

> As we have said too many times to want to repeat again, the question for decision by a federal court asked to set aside an arbitration award — whether the award is made under the Railway Labor Act, the Taft-Hartley Act, or the United States Arbitration Act — is not whether the arbitrator or arbitrators erred in interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not whether they grossly erred in interpreting the contract; it is whether they interpreted the contract.

See also, *American Federation of State County and Municipal Employees v. Department of Central Management Services, et al.*, 671 N.E.2d 668, 672 (1996) [citation omitted]:

> ... [A]ny question regarding the interpretation of a collective-bargaining agreement is to be answered by the arbitrator. Because the parties have contracted to have their disputes settled by an arbitrator, rather than by a judge, it is the arbitrator's view of the meaning of the contract that the parties have agreed to accept. We will not overrule that construction merely because our own interpretation differs from that of the arbitrator. ...

With the City Council's ratification, this remarkably protracted labor dispute which has gone on for over six years will now be over. And, for what it's worth, this remarkably complex process with the final outcome resolving an extraordinarily long labor dispute occurred with the parties acting in complete good faith "behind closed doors".

This Board has interpreted the IPLRA and the parties' collective bargaining agreement. The Rule of Law is clear showing that slogans and catch phrases do not set contract terms of collective bargaining agreements, but statutes and precedent do.

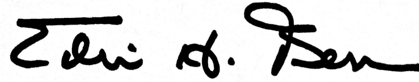
It is really time to move on.

V. CONCLUSION

All tentative agreements between the parties from the med-arb procedure conducted under the Scheduling Order along with the arbitration issue resolved by the Interim and Supplemental Interim Awards are adopted into this Award.

With Mayor Johnson's election and a new administration along with a new Superintendent of Police, it is hoped that relations between the police and communities along with the morale of the officers will improve – they must. However, this

Board's function is limited to apply statutory and contractual requirements to set the terms of the parties' collective bargaining agreement – which we have done. If further reform is needed to be accomplished, that is beyond the authority of this Board.[36]



Edwin H. Benn
Neutral Chair

The Lodge's Board Member concurs.

The City's Board Member concurs with the terms of this Award found in the Appendix, but dissents to the arbitration requirements adopted by this Award (Dissent attached after Appendix).

Dated: October 19, 2023

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[36] The City has maintained throughout that I did not have authority to issue the Interim and Supplemental Interim Awards. For reasons discussed in the Interim Award at 20-26 and the Supplemental Interim Award at 27-30, clearly, I did have authority to issue those awards as this Board acted with majority rulings. Given that the parties have now negotiated a full contract and this Award incorporates the parties' agreements and the provisions of the prior awards with respect to arbitration and constitutes a full and final award, the City's arguments that I could only issue a final award and not interim awards are moot.

APPENDIX

BEFORE
DISPUTE RESOLUTION BOARD

Edwin H. Benn (Neutral Chair)
Cicely Porter-Adams (City Appointee)
John Catanzara, Jr. (Lodge Appointee)

In the Matter of the Arbitration	)		
	)		
Between	)		
	)		
CITY OF CHICAGO,	)		
	)		
("CITY")	)	**CASE NO.**	**AAA 01-22-003-6534**
	)		**Arb. Ref. 22.372**
-and-	)		**(Interest Arbitration)**
	)		
FRATERNAL ORDER OF POLICE, CHICAGO LODGE NO. 7,	)		
	)		
("LODGE")	)		

CITY OF CHICAGO'S COMPREHENSIVE OFFER TO RESOLVE TERMS OF COLLECTIVE BARGAINING AGREEMENT

1) **Term**

Section 28.1 — Term of Agreement

This Agreement shall be effective from July 1, 201~~2~~**7** and shall remain in full force and effect until June 30, 20~~17~~**27**. It shall continue in effect from year to year thereafter unless notice of termination is given, in writing, by certified mail, by either party no earlier than February 1, 20~~17~~**27** and no later than March 1, 20~~17~~**27**. The notices referred to shall be considered to have which case the date of notice shall be the written date of receipt. It is mutually agreed that the Articles and Sections shall constitute the Agreement between the parties for the period defined in this Section.

2) **Salary Schedule**

Section 26.1 — Salary Schedule

A. Effective July 1, 201~~2~~**7**, the basic salary of all Officers covered by this Agreement shall be increased as follows: effective July 1, 201~~2~~7, ~~two~~ one percent (~~2~~1%); effective January 1, 201~~3~~8, two and one quarter percent (2.25%); effective January 1, 20~~14~~19, two and one quarter percent (2.25%); effective January 1, 20~~15~~20, ~~one~~ two and one-half percent (~~1~~2.50%); effective January 1, 20~~16~~21, ~~one~~ two and one-half percent (~~1~~2.50%); effective July 1, 20~~16~~22, two and one-half percent (2.50%); effective January 1, 20~~17~~23, ~~one~~ two and one-half percent (~~1~~2.50%); effective January 2024, five percent (5.00%); effective January 1, 2025, five

percent (5.00%); effective January 1, 2026, three to five percent (3.00% to 5.00%)*; effective January 1, 2027, three percent (3.00%) to five percent (5.00%)*.

* In 2026 and 2027, the percentage increase varies between 3.00% and 5.00% depending on the CPI-U. If CPI-U is 3.00% or less, then the percentage increase is 3.00%. If CPI-U is 5.00% or more, then the percentage increase is 5.00%. If the CPI-U is between 3.00% and 5.00%, the percentage increase will be equal to the CPI-U, rounded to the nearest tenth. The U.S. City Average June CPI-U release in July of the preceding year will be used to determine the percentage increase in 2026 and 2027.

The salary schedule for employees with more than thirty (30) years of service prior to January 1, 2006 is set forth in Appendix A, "Salary Schedule for Officers on Step 11 Prior to January 1, 2006."

B. Officers covered by this Agreement who are assigned as Armorer, Canine Handler, ~~Evidence Technician~~, Explosives Detection Canine Handler, Extradition Officer, Fingerprint Examiner, ~~Field Training Officer~~, Marine Unit Officer, Mounted Patrol Unit Officer, Police Agent, or Police Technician ~~or Traffic Specialist~~ shall receive D-2 pay as base salary. Effective January 1, 2015, Officers covered by this Agreement who are assigned as Helicopter Pilots shall receive D-2 as base salary and shall not forfeit their grade and pay status if such status is higher than D-2 pay.

C. ~~Officers covered by this Agreement who hold the position of Detective shall receive D-2A pay as base salary.~~ Effective January 1, 2024, Officers covered by this Agreement who are assigned as Evidence Technician, Field Training Officer, Major Accident Traffic Specialist or Special Weapons and Tactics Officers shall receive D-2A pay as base salary.

D. Officers covered by this Agreement who hold the position of Detective shall receive D-2A pay as base salary through December 31, 2023. Effective January 1, 2024, they shall receive D-2B pay as base salary. The D-2B rate shall be midway between the D-2A and D-3 rates.

E. Officers covered by this Agreement who are assigned as a Field Training Officer shall continue to be allowed to work up to an additional one-half (1/2) hour per day prior to or at the conclusion of his or her tour of duty which time is to be compensated in accord with Article 20-Overtime. Effective January 1, 2024, a Field Training Officer may exchange (cash in) accumulated compensatory time not to exceed one hundred (100) hours each year of this Agreement at the FTO's hourly rate at the time of payment. Application for such exchange shall be on a form provided by the Employer and at a time each year set by the Employer. In no event shall payment be made any later than March 1 of the year following application.

F. Officers covered by this Agreement who are assigned as Explosive Technician I, Firearms Identification Technician I, Legal Officer I, Police Forensic Investigator I, Security Specialist, or Supervising Substance Abuse Counselor shall receive D-3 pay as base salary.

F. During the term of this Agreement, should there be enacted into law legislation pursuant to which Officers covered by this Agreement are required to increase their contributions to the Policemen's Annuity and Benefit Fund of the Illinois Pension Code (40 ILCS 5/5-101 et seq.) or any successor pension fund in an amount above the amount of the current annual contribution of 9% of salary, the Lodge may reopen this Agreement solely on the issues of base salary and percentage increases ("Salary") and Duty Availability Pay for the purpose of

renegotiating the Salary and Duty Availability Pay increases which shall be paid to Officers. The Lodge shall have thirty (30) days from the date it receives notice that the contributions will increase to notify the Employer, in writing, by certified mail, of its intent to reopen this Agreement. The notice referred to shall be considered to have been given as of the date shown on the postmark. Written notice may be tendered in person, in which case the date of notice shall be the written date of receipt. In the event this Agreement is reopened pursuant to this provision, the Salary and Duty Availability Pay increases set forth in this Agreement will not be changed or reduced without the written consent of the Lodge. The Employer and the Lodge shall have ninety (90) days to renegotiate the Salary and Duty Availability Pay increases set forth in this Agreement. In the event the parties are unable to resolve these issues during the ninety (90)-day negotiation period, or within any mutually agreed to extension, the dispute shall be submitted to the impasse resolution procedure set forth in Section 28.3(B).

H. Effective January 1, 2024, Officers certified for LEMART, CIT, or Bike Officer shall receive an annual stipend of $1,000. The CIT and Bike Certification stipends shall be paid on a quarterly basis ($250/quarter). Payment of the stipend shall be made in the last pay period of the quarter following the quarter in which the stipend was earned.

3) **Bidding for Mass Transit**

Section 23.8 — Filling Recognized Vacancies

This Section shall apply only to the Public Transportation Section including the Public Transportation Canine Unit, Public Housing Sections North and South, the Special Activity Section, Traffic Section/Detail Unit, Traffic Enforcement Unit, Traffic Court/Records Unit, Traffic Safety & Training Unit, Major Accident Investigation Unit, Loop Traffic, District Law Enforcement, Airport Law Enforcement North and South, Mounted Unit, Marine Unit, Gun Registration Section, Records Inquiry Section, Field Inquiry Section, Evidence & Recovered Property Section, Police Document Services Section, Central Detention Section, Auto Pound Section (D-1 Officers), Electronics and Motor Maintenance Division (D-1 Officers), Office of Emergency Communications (excluding the Alternate Response Section), Area Criminal Investigations, Missing Persons Section, Juvenile Court Liaison Section, Youth Investigation Group Areas (excluding Youth Investigation Group Special Investigation Unit and Youth Investigation Group Administration), Auto Theft Section, Bomb and Arson Section (except bomb technicians), excluding the immediate staff of each exempt commanding officer not to exceed two (2) staff members.

A vacancy for purposes of this Section ("recognized vacancy") exists when an Officer is transferred, resigns, retires, dies, is discharged, when there are new units created, or when the Department increases the number of employees in a unit, except for details for not more than three (3) months and the Summer Lakefront Bike Detail. The Employer shall determine at any time before said vacancy is filled whether or not a recognized vacancy shall be filled. If and when the Employer determines to fill a recognized vacancy, this Section shall apply.

In order to avoid the inefficiency of chain-effect bidding, the vacancy created by the reassignment of a successful bidder shall be a recognized vacancy herein; however, subsequent vacancies created thereby shall be filled within the Department's discretion. Further, there is no recognized vacancy created as a result of emergencies, or when an Officer is removed for disciplinary reasons

for up to 30 days. When an Officer is removed for disciplinary reasons for more than 30 days, a recognized vacancy is created.

The Employer shall post a list of recognized vacancies, if any, stating the requirements needed to fill the opening, at least 14 days before the start of the 28-day police period. A copy of such postings shall be given to the Lodge. Non-probationary Officers within the same D-1 salary grade or D-2 job classification, within 72 hours of the time the list has been posted, may bid on a recognized vacancy in writing on a form to be supplied by the Employer. One copy of the bid shall be presented to the Employer; one copy shall be forwarded to the Lodge; and one copy shall be retained by the Officer. Bidding under this Section 23.8 may only be for a recognized vacancy in a specific unit without regard to shift, day off, unit duty assignments, etc. The Employer shall respond to the successful bidder and the Lodge no later than 3 days prior to the change day for the new 28-day police period. During the bidding and selection process, the Employer may temporarily fill a recognized vacancy by assigning an Officer to said vacancy until the recognized vacancy is filled.

An eligible bidder shall be an Officer who is able to perform in the recognized vacancy to the satisfaction of the Employer after orientation without further training. The Employer shall select the most senior qualified bidder when the qualifications of the Officers involved are equal. In determining qualifications, the Employer shall not be arbitrary or capricious, but shall consider training, education, experience, skills, ability, demeanor and performance, except that the parties recognize that the unique operational needs of the Employer require flexibility in the delivery of public service and to meet this need the Employer may fill 20% of the recognized vacancies within its discretion, provided that, if the Employer does not utilize any or all of its 20% exception in any personnel order, the remainder of the unused exception may be carried forward and used to fill future recognized vacancies within a twelve (12)-month period.

An exception to the above paragraph will apply to Airport Law Enforcement North and South, ~~and~~ the Traffic Section/ Detail Unit and the Mass Transit Unit, fifty percent (50%) of all recognized vacancies in each of these units shall be filled by bid.

Bidding procedures will be done in conformance with the Memorandum of Understanding in this Agreement. The successful bidder may not bid for another recognized vacancy for one (1) year unless reassigned by the Employer during that year. A successful bidder may not be reassigned except for (1) emergencies for the duration of the emergency, (2) for just cause or (3) where the Superintendent determines that the Officer's continued assignment would interfere with the Officer's effectiveness in that assignment. When there are no qualified bidders, the Employer may fill the recognized vacancy within its discretion.

Side Letter Re: Mass Transit Unit

President John Catanzara, Jr.
FOP Chicago John Dineen Lodge No. 7
1412 West Washington Blvd.
Chicago, IL 60607

Dear President Catanzara,

This letter will confirm our agreement, reached during negotiations for a successor to the collective bargaining agreement that expired on June 30, 2017, concerning implementation of the fifty percent (50%) bidding provision applicable to the Mass Transit Unit in Section 23.8. The parties agree that this provision applies only to recognized vacancies occurring after the ratification of this Agreement. Nothing in this modification of Section 23.8 shall be relied upon to involuntarily remove any Officer currently assigned to the Mass Transit Unit.

4) **Details**

Section 23.11 — Details

Officers assigned to units designated to provide personnel to the Summer Mobile Force, Expressway Detail, Auto Snow Tow Detail, and the Winter Holiday Season Traffic Detail will be permitted to bid for this detail on the basis of seniority. If and to the extent that there are insufficient qualified bidders from a designated unit to meet that unit's allocation, the Employer will select Officers who are deemed qualified by reverse seniority from the designated unit to fill that unit's allocation.

If the Employer decides to assign an Officer to a detail outside the area, district, or unit, to a sports event, parade, festival, or labor dispute; or to another event detail which constitutes a tour of duty, the Employer shall announce the detail at a roll call preceding the event, which roll call is for the same roll call on the same watch in the same unit from which Officers are to be assigned to the detail. If notification at roll call is not feasible or appropriate, the Employer shall determine the method of notification. The Employer shall select Officers to work the detail on the basis of seniority from among those qualified Officers on said watch who are not in bid jobs and who volunteer for the detail. If and to the extent that there are insufficient qualified volunteers, the Employer shall select Officers on the basis of reverse seniority. The Employer may assign probationary officers during their initial twelve (12) month period of probation without regard to seniority. For purposes of this paragraph, the Employer may retain a Field Training Officer(s) (FTO), for the period of time during which the FTO(s) is (are) training a probationary officer(s).

When the Employer decides to assign an Officer to a detail outside the Officer's unit of assignment for more than ten (10) days to a unit listed in Section 23.8 to provide relief for a temporary manpower shortage due to furlough, medical, or suspension, the Employer shall select Officers to work the detail on the basis of seniority from among those qualified Officers who volunteer for the detail. If and to the extent that there are insufficient volunteers, the Employer shall select Officers on the basis of reverse seniority, provided that the Employer may assign probationary officers during their initial twelve (12) month period of probation without regard to seniority.

When the Employer decides to assign an Officer to a detail outside the Officer's unit of assignment for more than thirty (30) days to a unit listed in Section 23.8 to provide relief for a temporary manpower shortage due to the actual strength being more than ten (10%) percent below authorized strength, the Employer shall select Officers to work the detail on the basis of seniority from among those qualified Officers who volunteer for the detail. If and to the extent that there are insufficient volunteers, the Employer shall select Officers on the basis of reverse seniority, provided that the Employer may assign probationary officers during their initial twelve (12) month period of probation without regard to seniority.

The Employer's right to assign Tactical Teams, Mission Teams, District Gang Tactical Teams, or other specialized units shall not be restricted in any way by this Section. In emergency situations, or situations where the Employer reasonably anticipates civil disorder will occur, or does occur, this Section shall not apply.

For purposes of bidding, the Employer may disregard seniority if and to the extent necessary to achieve the balance of experience and qualifications the Employer determines to be desirable in the detail and unit involved.

For purposes of selecting Officers on the basis of reverse seniority, the Employer may retain a junior Officer if and to the extent necessary to fulfill operational needs.

If the Employer assigns an Officer to a detail or denies an Officer(s) assignment to a detail in any manner contrary to the provisions of this Agreement, the affected Officer(s) will be entitled to compensation at the rate of time and one-half in quarter hour increments for the duration of the detail.

Any time the Employer designates a unit to provide personnel to fill any detail by reverse seniority, all Officers that have been detailed into that unit for more than ninety (90) days shall be included as though they were assigned to the unit providing the detail.

5) **Homicide Teams**

To be included in a Memorandum of Understanding:

In acknowledgment of their shared commitment to devise procedures and mechanisms to increase the homicide clearance rate, the parties agree to implement a pilot program in the Detective Division. Detectives will be selected to participate in the pilot program pursuant to the Notice of Job Opportunity ("NOJO") process. Homicide Detectives participating in the pilot program will be assembled into teams. The objective of the pilot program is to enable each team to focus on solving homicide cases by removing distractions, providing a work schedule geared to the operational needs of the team, and with additional resources. The following provisions shall be applicable to Detectives assigned to the Homicide Teams:

1. They shall work a Ten (10) Hour schedule;
2. They shall be treated as Fourth Watch for purposes of Section 20.7 of the Agreement;
3. A rotating "on call" system shall be established pursuant to which Detectives will be available to respond to homicides while off-duty;
4. Individual Detectives will be provided with take-home cars when on-call;
5. Detectives assigned to the Homicide Team(s) shall have priority for receiving specialized and advanced training focused on investigations and new techniques.

6. Detectives assigned to the Homicide Team(s) shall be entitled to two (2) hours of compensatory time for each RDO in on-call status. In the event such Detective is called out when in on-call status, the Detective shall be entitled to overtime compensation in lieu of the two (2) hours of compensatory time.

The pilot program shall remain in effect for one (1) year, from January 1, 2024 through December 31, 2024. Nothing shall prevent the parties from terminating or modifying the provisions of the pilot program by mutual agreement prior to expiration of the one-year period. At the conclusion of the one-year period the Department may, within its sole discretion, elect to terminate the pilot program. Upon request, the Department shall promptly meet with the Lodge to discuss the rationale for its decision. If the Department elects to continue the pilot program, it may do so. If the Lodge objects to the continuation of the pilot program, it may submit the dispute to expedited arbitration. The issue before the arbitrator shall be whether the Department was unreasonable in deciding to continue the pilot program.

6) **Probationary Police Officers**

Article 2 – Recognition

The Employer recognizes the Lodge as the sole and exclusive collective bargaining representative for all sworn Police Officers below the rank of sergeant (herein referred to as "Officer") excluding probationary officers employed by the Employer in its Department of Police, provided said probationary period shall not extend beyond an eighteen (18) month period.

The normal probationary period shall consist of eighteen (18) months of actual presence during active duty. Consequently, time absent from duty or not served, for any reason, shall not apply toward satisfaction of the probationary period, except as provided in Appendix P. Notwithstanding any provision in this Article or in Appendix P to the contrary, under no circumstances shall an Officer who has not completed Field Training be deemed to have completed the probationary period, regardless of the reason(s) for not completing Field Training. During the probationary period, an officer is not entitled to any rights, privileges or benefits under this Agreement, except as provided in Appendix P.

Officers covered by the Agreement who have completed their probationary period as defined in Article 2 of the Agreement and thereafter commence disability or approved leaves of absence but subsequently return to active duty shall not be considered probationary and shall be entitled to all rights and benefits provided for in the Agreement, including, but not limited to, the right to invoke the provisions of Article 9 of the Agreement.

Appendix P

BENEFITS DURING PROBATIONARY PERIOD

In connection with the extension of the probationary period from a twelve (12) month period to an eighteen (18) month period, the following rights, privileges and benefits shall apply upon the completion of the first twelve (12) months of the probationary period:

Article 3 -	Lodge Security
Section 7.1 -	Administration of Summary Punishment
Article 8 -	Employee Security
Article 10 -	Non-Discrimination
Article 11 -	Holidays
Article 12 -	Promotions
Article 18 -	Disability Income
Article 19 -	Bereavement Leave
Article 20.1 -	Work Day and Work Week
Article 20.2 -	Compensation for Overtime
Article 20.3 -	Sixth and Seventh Day Work
Article 20.4 -	Call-Back
Article 20.5 -	Court Time
Article 20.8 -	Stand-By
Article 20.11 -	Accumulation of Compensatory Time
Article 20.12 -	Back to Back Shifts on Change Day
Article 21.3 -	Uniform Allowance
Article 22 -	Indemnification
Article 24 -	Educational Reimbursement
Article 25 -	Life and Health Insurance Provisions
Article 26 -	Wages
Article 27 -	Residency
Article 29 -	Baby Furlough Days
Article 29.A. -	Furloughs
Article 30 -	Personal Leaves of Absence
Appendix A -	Salary Schedule for Sworn Police Personnel
Appendix D -	Dental Plan
Appendix E -	Network Changes
Appendix F -	In-Network/Out-of-Network Care
Appendix G -	Health Care Contributions for Active Officers

Appendix H - Prescription Drug Costs

Appendix I - Chemical Dependency and Mental Health Co-Insurance &

Appendix K - Limits High Risk Pregnancy Screening Program Procedures

Appendix N - for Injury on Duty and Recurrence Claims Subrogation

Appendix O - Language for City of Chicago

LOU Regarding Retroactivity of Wage Increases to Retirees

LOU Regarding One-Half Hour Lunch Period

LOU Regarding Article 22 Indemnification

MOU Regarding Health Care Plan

LOU Regarding Health Care Plan/Election by Married Employees

Any dispute or difference between the parties concerning the interpretation and/ or application of any of the above provisions shall be subject to the Grievance Procedure of Article 9.

The parties further agree that an Officer who successfully completes his or her probationary period after having been placed on I.O.D. shall be entitled to the benefits under the contract on the same basis as police Officers who were in that Officer's class who did not have his or her probationary period extended.

Finally, the parties agree that in the event a probationary police officer ~~during~~ after completion of his or her ~~final~~ first six (6) months of the probation period and a non-probationary police Officer are involved together in a situation which gives rise to the non-probationary police Officer and the probationary police officer each receiving discipline of a ~~five~~ ten (~~5~~10) day suspension or less and the discipline for the non-probationary police Officer is subsequently rescinded or reduced, any discipline imposed on the probationary police officer may be reviewed in accordance with the collective bargaining agreement and the City will not assert timeliness provided the Officer has completed successfully his or her probationary period.

7) **Foot Pursuit Policy**

Section 8.xx --Discipline for Foot Pursuits

An Officer shall not be disciplined for engaging or not engaging in, or terminating, a foot pursuit so long as done in accordance with the foot pursuit policy as determined by the Department.

8) **Body Worn Cameras**

Memorandum of Understanding

The City of Chicago Police Department ("City" or "Department") and the Fraternal Order of Police, Lodge No. 7 ("Union" or "Lodge") enter into this Memorandum of Understanding with respect to certain issues relevant to Body Worn Cameras.

The Lodge and the City have reached the following agreements and understandings:

a) BWCs shall not be intentionally activated to record conversations with other employees with or without their knowledge during routine, non-law enforcement activities "Law enforcement activities" are those as defined in the Law Enforcement Officer-Worn Body Camera Act, 50 ILCS 706, including but not limited to surreptitious recordings of conversations with other members;

b) BWCs shall not be used in places where, or at times when, a member has a reasonable expectation of privacy, such as locker rooms and restrooms, or other facilities in which private activities of Officers occur, and post-incident conversations with any Department members or supervisors;

c) BWCs shall not be used to record a member's privileged communications as recognized under law. Conversations between a Lodge representative, unit representative or other person authorized by the Lodge to discuss collective bargaining or representative matters with an Officer may not be recorded. Any recording of such privileged communication may not be the subject of a disciplinary investigation or discipline except where such use of the recording is permissible under 735 ILCS 5/8-803.5.

d) Recordings captured by inadvertent camera activation that are prohibited by the foregoing shall be identified, protected and reviewed by the appropriate Departmental authority to determine proper action (including but not limited to deletion upon determination that the recording is not a public record and therefore not required to be maintained) No disciplinary action in response to any conduct captured on the recording may be taken unless it is in conformance with the Law Enforcement Officer-Worn Body Camera Act (50 ILCS 706/10-1 *et seq)* and the collective bargaining agreement.

e) The Department acknowledges that current technology does not permit BWCs to be remotely or automatically activated. In the event technology evolves to the point where BWC can be automatically activated (e.g., as is the case with in-car cameras, which are automatically activated when the emergency lights are activated), it shall not implement the technology without prior notice to and negotiating the impact with the Lodge. The Department acknowledges that it has no intention of implementing a system whereby the BWC can be activated remotely and without the Officer's knowledge, unless such activation is necessary for purpose of Officer safety and to prevent imminent risk of death or bodily harm to an Officer.

f) Within ninety (90) days of the date of execution of this MOU, the Department will implement a mechanism to ensure that the review by the Watch Operations Lieutenant of BWC recordings, as provided for in Section V.D.3 of Special Order S03-14, is effectuated on a random basis. Videos viewed by the Watch Operations

Lieutenant pursuant to this section shall be limited to videos generated in the seven (7) calendar days preceding the viewing.

1. The City will continue its practice of providing advance notice to Officers when videos will be uploaded on COPA's portal.

g) It is agreed that there are circumstances where BWC footage can be helpful for training purposes (e.g., training recruits in the Academy, etc.). Where BWC footage is used for such purposes, the Department will notify the Officer(s) involved and will blur the face(s) and other identifiers of the Officer(s) appearing in the footage. This provision shall not apply in the case of re-enactments created for training purposes.

h) In the event the Department seeks to use a BWC recording to discipline an Officer covered by the collective bargaining agreement, such use shall conform to the requirements of Section 20(a)(9) of the Law Enforcement Officer-Worn Body Camera Act, 50 ILCS 706/10-20(a)(9) and the provisions of the collective bargaining agreement.

i) Unless prohibited by law, Department members may review their BWC recording of an incident prior to writing any report related to the incident. The member will document this fact in the narrative portion of the report. This includes but is not limited to case reports, arrest reports, TRRs, and investigatory stop reports.

j) An Officer required to wear BWC has the option to turn off the BWC during times in which the officer is not actively engaging the public (e.g., while on break, or attending court).

k) The City will continue its practice of blurring the faces and other identifiers of undercover Officers on BWC footage before releasing them to the public.

l) The City will continue the practice of allowing Officers to flag their own recordings for purposes related to their duties.

m) In the event an Officer loses his or her BWC while in the performance of duties, any discipline for the loss of the BWC shall be subject to the same standards applicable to the loss of other equipment.

AGREED AND APPROVED:

City of Chicago

By: ____________________________

Date: __________________________

Fraternal Order of Police,
Lodge No. 7

By: ________________________

Date: ______________________

9) **Tuition Reimbursement**

Add new subsection (J) to Article 24:

Effective January 1, 2023, the Employer will issue tuition reimbursement payments as a direct deposit within 120 days from submission to the Comptroller's Office.

10) **Payment of Wages**

Section 26.4 — Payment of Wages

Except for delays caused by payroll changes, data processing or other breakdowns, or other causes outside the Employer's control, the Employer shall continue its practice with regard to the payment of wages, which generally is: (1) payment of wages provided herein shall be due and payable to an Officer no later than the ~~1st~~7th and ~~16th~~22nd of each month, (2) holiday premium pay shall be due and payable to the Officer no later than the 22nd day of the month following the month in which the holiday premium was earned, (3) other premium pay shall be payable to the Officer no later than the last day of the period following the period in which the premium work was performed. The Employer shall not change said pay days except after notice to, and, if requested by the Lodge, negotiating with the Lodge. "Negotiating," for the purposes of this Section, shall mean as it is defined in Section 8(d) of the National Labor Relations Act.

Effective no later than July 1, 2015, printed check stubs given to Officers on each payday shall include the Officer's PC number and no personal identifiers and Officers shall have the option of receiving check stubs online. Effective January 1, 2023, the Employer agrees to allow access to "GreenSlips" from Officers' personal computers with internet access.

11) **Payment of Time**

Section 26.5 — Payment of Time

An Officer covered by this Agreement who resigns, retires, ~~or~~ dies or is separated, shall be entitled to and shall receive all unused compensatory time accumulated by said Officer including furlough time, baby furlough days, personal days, and holidays. ~~An Officer who is separated for cause shall be entitled to receive only unused compensatory time accumulated as a result of earned overtime for hours worked in excess of 171 per 28-day period.~~ Whenever an Officer shall be entitled to a monetary payment from an arbitration award or settlement agreement, monetary payment shall be made within six (6) weeks of the time of the final determination of the amount owed by the Employer.

12) **"Peoples' Court"**

New Section 9.3(D):

An Officer may pursue a grievance to challenge a reprimand or a suspension of thirty (30) days or less in an expedited grievance procedure in which an arbitrator shall conduct an abbreviated hearing in which the Officer and a Lodge representative will be allowed to present

their argument as to why there was no just cause to support the discipline. A representative of the Employer shall be allowed to present a rebuttal argument in support of the discipline that has been issued. The record before the arbitrator shall be the same as in a Binding Summary Opinion matter pursuant to Section 9.6(A), except that the parties will not be allowed to file written arguments in support of their positions, and the arbitrator will be required to issue an oral decision on the same day as the presentation of the grievance. The arbitrator's decision shall be final and binding on the parties and there shall be no further review of the reprimand or suspension under this Agreement.

The expedited hearings shall be conducted at least six (6) times per calendar year. Cases presented under the Section shall be subject to mutual agreement of the Employer and the Lodge. The arbitrator shall be selected from a panel of five arbitrators of the discipline panel selected by the parties on an annual basis. The arbitrators selected on an annual basis for this expedited arbitration shall agree to adjudicate cases in accordance with the expedited terms of this section. In the event the parties are unable to agree upon a panel of arbitrators, for each vacancy on the panel they will contact the Federal Mediation and Conciliation Service (FMCS) and request a panel of seven (7) arbitrators. Upon receipt of the panel, either party may strike the first panel and request a second panel of seven (7) arbitrators. No subsequent panel may be requested except with the mutual written agreement of the Employer and the Union. Upon receipt of the panel, the parties will alternately strike names, with the party striking first to be determined by coin toss, until one (1) arbitrator remains, who shall then be notified of his selection.

Subject to the approval of the Lodge, an Officer may exercise a right to pursue a grievance that has been previously filed pursuant to Section 9.6 to challenge a suspension under this expedited procedure and by doing so will be considered to have waived any right to pursue a grievance on this matter pursuant to Section 9.6 of this Agreement.

The proceedings before the arbitrator shall not be recorded by a court reporter, but the parties may tape record the arguments and the oral decision of the arbitrator.

13) **RDO Cancellations**

To be included in a side letter:

President John Catanzara, Jr.
FOP Chicago John Dineen Lodge No. 7
1412 West Washington Blvd.
Chicago, IL 60607

Dear President Catanzara,

This letter will confirm our agreement, reached during negotiations for a successor to the collective bargaining agreement that expired on June 30, 2017, concerning the cancellation of regular days off.

1. The notice requirement set forth in Paragraphs 2 and 3 of this Side Letter shall apply to Memorial Day, Father's Day, Juneteenth, July 4th, Labor Day, Thanksgiving,

New Year's Eve, the Festival of Lights, the Tree Lighting Ceremony, and any other known event.

2. No less than twenty-eight (28) days before the effective date of deployment, except where operational needs preclude doing so, for each of the four Holidays set forth in Paragraph 1, the Department will send an Anticipatory Notice apprising Officers of the then-anticipated deployment needs. It is understood that this Notice is anticipatory and subject to change. The Notice shall be communicated to the official email accounts of Officers. In addition, an AMC message will be sent and will be required to be read at roll call, if applicable. As part of the Notice, Officers will be offered the opportunity to volunteer to work on days during the scheduled deployment they are not scheduled to work (e.g., RDO or furlough). In the event of a need for additional manpower for the Department, the Department will first utilize the Officers who volunteered to work pursuant to the Anticipatory Notice.

3. No less than fourteen (14) days in advance of the scheduled deployment, the Department will send (via email and AMC message) an Effective Notice, containing the then-anticipated length of the deployment, whether RDOs will be cancelled, which units will be subject to the deployment, and whether 12-hour workdays will be implemented. It is understood that this Notice is subject to change in order to respond to operational needs that were not anticipated.

4. If the supply of such Officers who volunteered pursuant to Paragraphs 2-4 is not sufficient, the Department may cancel RDOs. If RDOs are cancelled, the Department will make a reasonable effort to maintain the normal (8.5 hours or 10 hours) schedule of RDO-cancelled Officers and assign them as needed, which could be 3rd watch, while in cancelled RDO status.

5. Officers represented by the FOP who have had both RDOs cancelled pursuant to one of the deployments referenced above will receive priority treatment of time due requests submitted pursuant to the negotiated time due MOU between the City and the FOP. This priority will extend through the twelve (12) months following the deployment.

6. Officers whose RDOs are being cancelled pursuant to the deployment will be given the opportunity to find another Officer on furlough to work in their stead.

7. The Department will continue the practice of giving good faith consideration to Officers who request to retain their RDO where good cause is shown. An Officer whose request is denied by his, her or their exempt Commanding Officer may appeal the denial to the appropriate Deputy Chief and Chief.

8. Officers on a 4/2 schedule will not be required to work more than ten (10) consecutive days. Officers on a 5/2 schedule will not be required to work more than twelve (12) consecutive days. Officers will have a minimum of nine (9) hours off between shifts.

9. a. Probationary Police Officers ("PPOs") are not subject to the provisions of this Side Letter, except that the parties agree that PPOs shall have a minimum of nine (9) hours off between shifts.

   b. The provisions of this Side Letter do not apply to Officers assigned to the 4th and 5th watches, and to the specialized units, except that the provisions of Paragraph 1, the Notice requirement set forth in the first four sentences of Paragraph 2 (except that such requirement is subject to change in order to respond to Department operational needs that were not anticipated), and Paragraph 13 shall apply to such Officers.

10. If the Department decides to cancel RDOs on a Department-wide basis because crime has increased based on statistical analysis, the Department must give fourteen (14) days' notice so as to permit a survey for volunteers and Officers to obtain substitutes.

11. The Notice provisions are subject to change to respond to Department operational needs that were not anticipated.

12. The provisions of this Side Letter do not apply if the Superintendent and the Mayor determine in writing that a serious emergency condition exists. Any such notice shall be sent to the Lodge.

13 No more than one RDO will be cancelled per work week except during the following operational periods, when two RDOs may be cancelled: Memorial Day, Father's Day, 4th of July, Labor Day, Thanksgiving, and New Year's Eve.

14 Officers will be guaranteed two consecutive days off each police period.

If the above accurately reflects our agreement, please so indicate by signing your name below.

14) **Parental Leave**

Per the attached policy, retroactive to January 1, 2023, in the same manner as agreed to with the three PBPA units.

15) **Upgrades and Stipends**

To be included in a Side Letter:

President John Catanzara, Jr.
FOP Chicago John Dineen Lodge No. 7
1412 West Washington Blvd.

Chicago, IL 60607

Dear President Catanzara,

This letter will confirm our agreement, reached during negotiations for a successor to the collective bargaining agreement that expired on June 30, 2017, concerning the upgrades of certain classifications provided for in Section 26.1(B) – (D) and stipends provided for in Section 26.1(H).

In consideration of the Employer's agreement to move Special Weapons and Tactics ("SWAT") Officers to D-2A, the Lodge agrees that in order to qualify, the SWAT Officer must be in a deployable status. For purposes of eligibility for this stipend, an Officer eligible for call out shall be considered to be in deployable status.

In consideration of the Employer's agreement to move Evidence Technicians to Grade D-2A, the Lodge agrees to waive, effective January 1, 2024, the provisions of the arbitration award issued January 29, 2017, by Arbitrator Daniel Nielsen in the matter of Grievance No. 129-15-002 (Evidence Technicians Out of Grade Pay), entitling Evidence Technicians to out of grade pay at the D-3 grade for processing homicides, police-involved shootings, and other crime scenes.

With respect to LEMART stipend, eligibility is conditioned upon the Officer carrying the IFAK (individual first aid kit). With respect to the CIT stipend, the parties agree that eligibility for the Stipend is limited to those Officers who voluntarily participate and remain in the CIT program. To be eligible for the Bike Officer stipend, the Officer must be available for events that necessitate the assignment of Bike Officers. All three stipends will be paid on a quarterly basis ($250 per quarter). Payment of the stipend shall be made in the last pay period of the quarter following the quarter in which the stipend was earned. As a further condition of eligibility for any of the three stipends, the Officer must have been eligible for field assignments during at least half of the preceding quarter. In calculating eligibility pursuant to the preceding sentence, time in pay status due to furlough, baby furloughs, personal days, and approved injury on duty leave under Section 18.1 shall be included.

16) **Summary Punishment Order**

The parties agree to amend the Summary Punishment Order (Special Order S08-01-05) to incorporate the modifications set forth in the parties' Tentative Agreement of October 11, 2022.

17) **Section 9.6B and C/Appendix Q**

B. Suspensions from Eleven (11) to Thirty (30) Days

Officers who receive a recommendation for discipline from eleven (11) to thirty (30) days as a result of a sustained Complaint Register investigation (CR#) shall have one of three options, the selection of which shall preclude the Officer, or the Lodge acting on his or her behalf, from selecting any of the other options listed below, except that the Officer

is permitted to accept the recommendation at any time. Within ten (10) working days of receiving the recommendation for discipline the Officer shall elect one of the following options:

1. The filing of a grievance challenging the recommendation for discipline; or

2. Submission of a grievance to, and in accordance with the provisions of, the Summary Opinion process set forth in Paragraph A(1) above; or

3. Accept the recommendation

In the event an Officer does not make an election within ten (10) working days, the recommendation for suspension will be deemed accepted, absent a written agreement between the Lodge and the Department to extend the election period.

When an Officer elects to file a grievance, the Lodge will have ~~sixty (60)~~ ninety (90) days from receipt of the investigative file to inform the Department whether the Lodge will advance the grievance to arbitration, and if so, whether the grievance will be advanced to arbitration, unless the parties mutually agree otherwise.

In the event the Lodge decides not to advance the grievance to arbitration, the Officer will have ten (10) working days to elect review of the recommendation for suspension by the Police Board as set forth in the Police Board's Rules of Procedure, Article IV, Section B, paragraphs 3 through 9 (published November 1, 1975). In the event the Officer elects review of the recommendation for suspension by the Police Board, the Officer will not be required to serve the recommended suspension, nor will the suspension be entered on the Officer's disciplinary record, until the Police Board rules on the merits of the recommended suspension.

Arbitration of suspension grievances pursuant to this Paragraph B shall be conducted in accordance with the provisions of Appendix Q.

C. Suspensions from Thirty-One (31) to Three Hundred Sixty-Five (365) Days

Officers who receive a recommendation for discipline from thirty-one (31) to three hundred sixty-five (365) days as a result of a sustained CR# shall have one of three options, the selection of which shall preclude the Officer, or the Lodge acting on his or her behalf, from selecting any of the other options listed below, except that the Officer is permitted to accept the recommendation at any time. Within ten (10) working days of receiving the recommendation for discipline the Officer(s) shall elect one of the following options:

1. A review by the Police Board as set forth in the Police Board's Rules of Procedure, Article I, II and III (published November 1, 1975); or
2. The filing of a grievance challenging the recommendation for discipline; or
3. Accept the recommended discipline.

In the event an Officer does not make an election within ten (10) working days, the recommendation for suspension will be reviewed by the Police Board.

When an Officer files a grievance, the Lodge will have ~~sixty (60)~~ ninety (90) days from the receipt of the investigative file to inform the Department whether the Lodge will advance the grievance to arbitration. Arbitration of suspension grievances pursuant to this Paragraph C shall be conducted in accordance with the provisions of Appendix Q. The parties will cooperate in the scheduling of all arbitration hearings.

In the event the Lodge decides not to advance the grievance to arbitration, the Officer will have ten (10) working days to elect review of the recommendation for suspension by the Police Board as set forth in paragraphs 9.6.C.1 above. In the event the Officer elects review of the recommendation for suspension by the Police Board, the Officer will not be required to serve the recommended suspension, nor will the suspension be entered on the Officer's disciplinary record, until the Police Board rules on the merits of the recommended suspension.

In the event an Officer does not make an election within ten (10) working days, the recommendation for suspension will be deemed accepted, absent a written agreement between the Lodge and the Department to extend the election period.

APPENDIX Q

GROUND RULES FOR ARBITRATION OF SUSPENSION GRIEVANCES PURSUANT TO SECTION 9.6.B AND 9.6.C

The following procedures shall apply to arbitrations of grievances challenging suspensions of eleven (11) to three hundred sixty-five (365) days.

A. The Lodge and the Employer have agreed to a panel of five (5) Arbitrators who shall comprise the exclusive list of Arbitrators to preside over the suspension grievances. The five (5) Arbitrators for the calendar year 20~~21~~23 are: George Roumell, Jr., Dan Nielsen, ~~Jaclyn Zimmerman,~~ Robert Perkovich, ~~Peter R. Meyers~~, Brian Clauss, Jeffrey Winton. After 20~~21~~23, the parties agree to consult with their counsel responsible for scheduling to obtain any updated list of five (5) arbitrators. Each December the Lodge and the City shall each be permitted to strike one (1) Arbitrator from the panel for any reason. In the event an Arbitrator is removed from the panel, the parties shall attempt to agree upon a replacement Arbitrator. If the parties are unable to agree upon a replacement, they shall request a list of seven (7) Arbitrators from the ~~American Arbitration Association~~ Federal Mediation and Conciliation Service ("FMCS"), each of whom must be a member of the National Academy of Arbitrators. Within ten (10) days after receipt of the list, the parties shall select an Arbitrator. Both the Employer and the Lodge shall alternately strike names from the list. The remaining person shall be added to the panel. In the event the Lodge and the City each strike an Arbitrator from the panel as part of the December process, and if the parties are unable to agree upon replacement Arbitrators, the parties shall request two lists from ~~the American Arbitration Association~~ FMCS to be used to select the two replacement Arbitrators.

B. Within ten (10) days of the Lodge electing to forward the suspension grievance to arbitration, the parties shall meet and select an Arbitrator from the panel. The parties shall inform the Arbitrator of the Arbitrator's appointment and request a hearing date within ~~sixty (60)~~ ninety (90) days, unless the parties mutually agree otherwise. If the Arbitrator is unable to provide a hearing date within ~~sixty (60)~~ ninety (90) days from the date of being contacted, the parties shall select another Arbitrator from the panel who is able to provide a hearing date within ~~sixty (60)~~ ninety (90) days, unless the parties mutually agree otherwise. Upon appointment of the Arbitrator, but prior to the date on which a cancellation fee would be incurred, and unless they have already done so, the parties shall schedule a date to conduct a settlement conference to attempt to resolve the grievance. More than one suspension grievance

may be discussed at the settlement conference. If the parties are unable to resolve the suspension grievance, they shall proceed with the Arbitration Process outlined in this Memorandum of Understanding.

C. Provided the Lodge accepts a hearing date within ~~sixty (60)~~ ninety (90) days of appointment of the Arbitrator, unless the parties mutually agree otherwise, the Officer will not be required to serve the suspension, nor will the suspension be entered on the Officer's disciplinary record, until the Arbitrator rules on the merits of the grievance. In the event additional day(s) of hearing may be required to resolve the grievance, such additional day(s) shall be scheduled within thirty (30) days of the first day of hearing. If the Lodge is not ready to proceed on a scheduled hearing date, the Officer shall be required to serve the suspension prior to the Arbitrator ruling on the merits of the grievance.

D. The authority and expenses of the Arbitrator shall be governed by the provisions of Sections 9.7 and 9.8 of the Agreement.

E. The provisions of this Appendix Q supersede Appendix S of the predecessor collective bargaining agreement. However, nothing shall prohibit or require the parties agreeing upon an expedited or "fast track" arbitration procedure for a specific grievance or category of grievances.

18) **Section 8.10 – Investigation Time Limits**

With respect to grievances challenging the recommended discipline on Officers for non-criminal misconduct, the Employer and the Union mutually acknowledge the principle that investigations of suspected employee misconduct are to be carried out on a timely basis, and that unwarranted delays in completing disciplinary investigations may prejudice the employee's ability to respond to or defend against allegations of misconduct. Accordingly, the Arbitrator is vested with specific authority to inquire into the reason(s) for any delay in completing an investigation, whether the Officer has been harmed by the delay in the investigation and, further, the parties mutually acknowledge that the Arbitrator, in the process of applying the tenets of the "just cause" principle, possesses the authority to reverse or reduce any disciplinary penalty where the evidence demonstrates that a disciplinary investigation was unreasonably delayed and that an Officer was prejudiced thereby.

Effective for disciplinary investigations concluding forty-five (45) days after the date of ratification of this collective bargaining agreement, in the event the Employer recommends a disciplinary penalty upon an Officer as a result of a disciplinary investigation that took more than eighteen (18) months to conclude, as measured from the date on which the disciplinary investigation was opened, upon request of the Union, the Arbitrator, who shall be the same Arbitrator selected to hear the merits of the disciplinary penalty, shall convene a hearing, preliminary to the hearing on the merits, to determine whether there was a reasonable basis for the investigation to take longer than eighteen (18) months. At this preliminary hearing the Employer shall bear the burden of demonstrating the existence of reasonable cause. "Reasonable cause" may include, but is not limited to, such factors as unavailability of the accused Officer or a critical witness, delays attributable to the Officer or his or her attorney, the unusual complexity of the matter under investigation, the need to investigate claims or new evidence arising in the course of

the investigation, the pendency of a criminal investigation involving the matter under investigation, the pendency of civil litigation involving the matter under investigation, etc. If the Arbitrator determines there was reasonable cause for the investigation to take longer than eighteen (18) months, the Arbitrator shall proceed to the hearing on the merits of the disciplinary penalty against the Officer.

Nothing in this sub-section C shall apply in any instance where the allegation against the Officer is of a criminal nature within the meaning of Section 6.1E.

19) **Retirement Credentials**

In accordance with the current policy, the Superintendent has the discretion to decide whether the Officer's personnel file should state that the Officer resigned or retired "while under investigation" based on the totality of the circumstances surrounding the investigation, including, but not limited to, the likelihood that the investigation will result in a sustained finding accompanied by a recommendation for the substantial disciplinary penalty, the possibility that the investigation may result in the decertification of an Officer as a peace officer and/or the extent to which the Officer has cooperated in the investigation both before and after his/her separation from employment.

In the event that the Lodge disagrees with the Superintendent's decision, the Lodge may submit the grievance to arbitration. The Arbitrator may set aside the Superintendent's decision only if the Arbitrator determines that the Superintendent's decision was arbitrary - or capricious *i.e.*, without a rational basis or justification - at the time of retirement.

20) **Retention Bonus**

Dear President Catanzara,

This letter confirms our understandings, as follows:

1. The parties agree that the Retention Bonus ordered by Arbitrator Benn in his Interim Award will not be implemented.
2. During the first quarter of 2024, all bargaining unit members shall receive a one-time non-pensionable bonus of $2,500.
3. Effective January 1, 2024, Officers may exchange (cash in) accumulated compensatory time not to exceed fifty (50) hours each year of this Agreement at the Officer's hourly rate at the time of payment. Application for such exchange shall be on a form provided by the Employer and at a time each year set by the Employer. In no event shall payment be made any later than March 1 of the year following application.

21) Effective in 2024, the amount of the physical fitness premium shall be increased to $450.

FOR THE FRATERNAL ORDER OF POLICE Lodge No. 7 FOR THE CITY OF CHICAGO

By:____________________________________ By:______________________________
John Catanzara James C. Franczek, Jr.

22) **Section 15.1A Safety Issues**

A. The Employer and the Lodge agree to cooperate to the fullest extent reasonably possible to provide the use of safe equipment and facilities, and to ensure that the safest possible working conditions are provided to the Officers, the Employer shall provide the following:

1. To protect Officers who may have been injured and who have suffered bodily injury, the Employer shall provide all Officers with LEMART training, emergency medical assistance training and the necessary medical supplies to enable them to tend to injured Officers or citizens.
2. During a pandemic or mass public health emergency, the Employer shall provide to all Officers the necessary training and necessary personal protective equipment.
3. Officers will be provided with appropriate training on the use of force rules that are consistent with the Department's General Orders.

23) Arbitrator Benn's Interim Award with respect to the issue of the Police Board and Arbitration will be submitted to the City Council.

24) **All Other Proposals Not Included Herein**

Are deemed withdrawn.

February 8, 2023

The Union agrees to the City's policy on Parental Leave, per the attached City of Chicago Paid Parental Leave Policy, retroactive to January 1, 2023.

Policemen's Benevolent &
Protective Association of Illinois,
Unit 156- Sergeants

By: James T. Cahill

Its: PRESIDENT - PBPA UNIT 156A

City of Chicago

Chief Labor Negotiator

Chicago Police Department

Effective Date: January 1, 2023

POLICY STATEMENT

This policy defines when City of Chicago employees may take a specified period of paid leave following the birth, adoption, or foster of a child or children. This leave will be administered in conjunction with the Family and Medical Leave Act of 1993 ("FMLA").

ELIGIBILITY

To be eligible for paid Parental Leave, sworn Department members must be employed by the City for at least twelve months. The twelve months do not need to be consecutive as long as the twelve months have occurred in the last seven years and members must have worked at least 1,250 hours during the previous twelve-month period. Hours worked do not include paid time off, including medical time, vacation time, or any other paid leave where the member is not actively working.

POLICY OVERVIEW

Eligible members may receive the following paid Parental Leaves:

1. up to 12 weeks paid Parental Leave for the birth of the member's biological child or children, including the member's biological children born using gestational surrogacy; or

2. up to 12 weeks paid Parental Leave for the adoption or foster of a child or children by the member; or

3. up to 8 weeks paid leave for members acting as gestational surrogates. If postpartum complications arise that require additional leave beyond the routine recovery period, the member may receive up to a maximum of 12 weeks of paid leave.

Paid Parental Leave may only be taken once per birth, adoption, or foster placement event and must be used before a biological child turns one year old or prior to the one-year anniversary of initial placement in the case of adoption or foster care. Any unused paid Parental Leave will be forfeited at the end of such a rolling year period. Paid Parental Leave and leave governed by FMLA must run concurrently. Paid Parental Leave must be taken consecutively and cannot be used intermittently or on a reduced schedule basis. Additional information regarding FMLA leave can be found in Rule XI of the City of Chicago Personnel Rules and in the Department directive entitled Leaves of Absence and Resignations. Additional paid options may be used following the exhaustion of paid Parental Leave including the use of available accrued vacation time, compensatory time, or personal days in accordance with the Department policy.

If a member is eligible for FMLA in the next calendar year following a paid Parental Leave, and wishes to request additional leave for parental bonding, such leave will be processed pursuant to the Department's FMLA policy delineated in the Department directive Leaves of Absence and Resignations.

Any fraudulent attempts to obtain paid Parental Leave may result in discipline up to and including separation.

PROCEDURES

A. Requesting Paid Parental Leave

1. To request paid Parental Leave, eligible members must submit a completed City of Chicago Department of Human Resources Request for Leave of Absence form (PER-73-A), a City of Chicago Application For Family and Medical Leave Or Personal Medical Leave form, and an automated Personnel Action Request (PAR) to the Human Resources Division at least thirty days prior to the date of the leave.

2. To the extent thirty days' notice is not possible, the member must submit these forms to the Human Resources Division as soon as possible. The Request for Leave of Absence Form will indicate the Paid Length of Leave Requested up to a maximum total of twelve weeks.

3. If an unforeseen medical condition requires a member to stop working prior to the originally anticipated start date of the leave, the member may be placed on the medical roll non-injury on duty status governed by the Department directive entitled Sworn Medical Roll - Non Injury on Duty Status.

NOTE: In cases of unforeseen medical conditions, paid Parental Leave will begin as of the member's confirmed date of delivery, and the member will be removed from the medical roll non-injury on duty status.

B. Additional Documentation

1. Biological parents requesting paid leave must also submit:

a. a medical certification confirming the pregnancy and indicating the estimated date of delivery (to be confirmed by the member upon delivery of the child or children); or

b. a birth certificate within sixty days of taking the leave.

2. Adoptive parents requesting paid leave must also submit:

a. a certification from an adoption agency confirming that the member has been matched by the agency with a child or children and the initial date of placement in the member's home; or

b. a birth certificate within sixty days of taking the leave confirming that the member is the adoptive parent.

3. Foster parents requesting paid leave must also submit a certification from a state or private foster agency confirming that the member has been matched by the agency with a child or children and the initial date of placement in the member's home.

4. Gestational surrogates requesting paid leave must also submit a medical certification confirming the pregnancy, the member's status as a gestational surrogate, and the estimated date of delivery (to be confirmed by the member upon delivery of the child or children).

C. During the Parental Leave

If a member needs to request an extension of his or her leave, the member must complete another City of Chicago Department of Human Resources Request for Leave of Absence form (PER-73-A) at least two business days prior to the expiration of the originally requested leave. To the extent two business days' notice is not possible, the member must submit the request as soon as possible. If applicable, the member will also provide a statement from his or her healthcare provider stating the reason for and the projected length of the extension.

PROCEDURES FOR RETURN FROM PARENTAL LEAVE

A. The first regularly scheduled workday after the expiration date of the requested leave is the scheduled return date for the member. The member must return to work on that date unless the member requested and has been granted an extension of leave.

B. Failure to report to work on the scheduled return date may be cause for discipline up to and including separation.

C. Should a member wish to return to work prior to the expiration of the leave, the member must notify the Human Resources Division within at least two business days prior to their intended early return date.

NOTE: The return date will be no later than the original date of the leave of absence.

D. For routine recovery from childbirth, the member does not need to provide a return-to-work certification unless they have restrictions or if complications arise that keep the member from returning to work at the expiration of their leave.

E. If complications prohibit the member from returning to at the expiration of their leave or prohibit the member from returning to work in full duty status, the member will follow the procedures outlined in Department directives entitled Sworn Medical Roll - Non Injury on Duty Status and Sworn Limited Duty Program.

F. Sworn members returning to duty following pregnancy will refer to the procedures outlined the Department directive entitled Pregnancy - Sworn Department Members.

Parental Leave Medical Roll

Members' use of Parental Leave will be applied against their available non-injury on duty status medical roll days, as defined by E03-01-02. Out of state and stationary status restrictions will not apply to members on Parental Leave. If a member has furlough scheduled while he/she is on Parental Leave, the furlough will be postponed until the member comes back from Parental Leave and will be given at the discretion of the Department.

The daily duty status for a Department member utilizing Parental Leave will be recorded on the unit's Automated Daily Attendance and Assignment Record and on the member's Time and Attendance Record with a distinct code (to be determined) that is not the same as Non Injury on Duty Medical (code 83). Medical Services Section will track Parental Leave as a category other than the currently used medical absence categories (sickness, injured, or injured on duty).

BEFORE
DISPUTE RESOLUTION BOARD

Edwin H. Benn (Neutral Chair)
Cicely Porter-Adams (City Appointee)
John Catanzara, Jr. (Lodge Appointee)

In the Matter of the Arbitration	)		
	)		
Between	)		
	)		
CITY OF CHICAGO,	)		
	)		
("CITY")	)	**CASE NO.**	**AAA 01-22-003-6534**
	)		**Arb. Ref. 22.372**
-and-	)		**(Interest Arbitration)**
	)		
FRATERNAL ORDER OF POLICE,	)		
CHICAGO LODGE NO. 7,	)		
	)		
("LODGE")	)		

CITY OF CHICAGO'S DISSENT FROM FINAL OPINION AND AWARD INCORPORATING INTERIM AND SUPPLEMENTAL INTERIM AWARDS

The Neutral Chair has labored valiantly, and successfully, to assist the parties in reaching agreement on a broad range of issues, as set forth in the Appendix attached to the Neutral Chair's "Final Opinion and Award" ("Award"). It is the City's belief that these agreements are in the best interest of all parties, especially including the residents of Chicago, and will prove instrumental in advancing the City's continuing commitment to embedding principles of constitutional policing. We are grateful to the Neutral Chair for his efforts in helping the parties get to this outcome. However, the Neutral Chair has rejected the City's repeated requests to modify his June 26, 2023 "Interim Opinion and Award" and his August 2, 2023 "Supplemental Interim Opinion and Award" ("Supplemental Interim Award"), directing that the successor collective bargaining agreement

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(“Agreement”) include an arbitration option for disciplinary actions in excess of 365 days and separations.[1]

As the City Appointee to the Dispute Resolution Board, it is my firm belief that the substantive provisions regarding resolution of separations and suspensions in excess of 365 days mandated by the Supplemental Interim Award are not justified by the record in this case or the parties’ history, are likely to frustrate the City’s efforts to bring about fundamental and necessary reforms in the Police Department, will sap public confidence in the disciplinary process applicable to police officers, will ultimately work to the detriment of police officers covered by this Agreement, and at bottom are inconsistent with the “interests and welfare of the public” as required by Section 14(h)(3) of the Illinois Public Labor Relations Act. (5 ILCS 315/14) Accordingly, I respectfully dissent from the Interim and Supplemental Awards (“Interim Awards”). My reasons follow.

The Interim Awards include these provisions governing the resolution of disputes over separations and suspensions over one year:

i) the right of the Lodge to submit such actions to binding arbitration in lieu of the Chicago Police Board, which up until now has had exclusive jurisdiction over those actions;

ii) the arbitration is to be closed to the public, unlike the case with hearings before the Police Board;

iii) there is no requirement that arbitrators hearing these cases are to have completed the same training required of members of the Police Board pursuant to Paragraphs 540-542 of the Consent Decree between the City and the Attorney General of Illinois;

iv) officers whom the Department is seeking to separate are entitled to remain on the payroll while the arbitration process plays itself out, contrary to decades’ long past practice; and

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[1] The Supplemental Interim Award was preceded by the Neutral Chair’s June 26, 2023 “Interim Opinion and Award” (“Interim Award”), in which he adopted the Lodge’s proposal for the arbitration option and remanded to the parties for the purpose of drafting language consistent with the Interim Award. It was the parties’ inability to agree upon language that led to the August 2 Supplemental Interim Award, in which the Neutral Chair mandated the language to be included in the successor Agreement.

v) the arbitration option is retroactive to September 14, 2022.

These provisions are extraordinary and far-reaching. I will address them in sequence.

These parties have engaged in formal collective bargaining since 1981, negotiating 12 collective bargaining agreements over that span. Throughout this period, separations and suspensions in excess of one year were within the Police Board's exclusive province. On four previous occasions[2] the Lodge resorted to interest arbitration to resolve the terms of the collective bargaining agreement. In none of those proceedings did the Lodge seek an option to submit such disciplinary actions to arbitration. We submit that one of the principal reasons for the absence of bargaining activity for an arbitration option is that neither party viewed the Police Board process as broken or in distress. As we argued in our pre-hearing submissions, the statistics bear this out. The Superintendent has traditionally been very judicious in pursuing the ultimate sanction of separation and the Police Board has not been anything like a rubber stamp. Between 2013 and 2017 a total of 78 separation cases proceeded to hearing before the Police Board. The Board imposed separation in 39 of them—exactly 50%. In more than 20% of the cases the Police Board determined that the officer was not guilty, resulting in no discipline. The percentage of cases resulting in separation increased somewhat between 2017 and 2021, but not unreasonably so. Of 49 separation cases decided over that period, 32 (or 65%) resulted in separation. Statistics like this are hardly the mark of a biased tribunal. By their conduct over the years, the parties acknowledged that the arbitration option was a solution in search of a problem.

This time around the Lodge saw fit to seek the arbitration option. We argued (and indeed demonstrated, we contend) that there is no factual justification for the option. The Neutral Chair

[2] Interest arbitration awards were issued by George Roumell in 1993, Steven Briggs in 2002, and by this Neutral Chair in 2005 and 2010.

responded that this is beside the point: "if a party requests arbitration of discipline in an interest arbitration, as a matter of plain statutory language in Section 8 of the IPLRA, that request *must* be adopted . . . [f]urther, whether those boards functioned well or did not function at all are just not relevant considerations under Section 8's statutory mandate . . .". (italics in the original).[3] With due respect, that view of the matter simply is not responsive to the needs of the moment.

We acknowledged in these proceedings the authorities the Neutral Chair assembled for the proposition quoted in the preceding paragraph. But as we pointed out at the time, all of those cases involved municipalities that just do not bear comparison to Chicago and the circumstances in which it finds itself. Contrary to the Neutral Chair's dismissal of our position, characterizing it as a claim that "Chicago is different because we are bigger"[4], our argument goes considerably beyond size. We defy anyone to point to another city or village in this state that is in the same ballpark when it comes to complexity of the issues, diversity of communities served, or the intensity of the public focus on how the Police Department operates. Our fundamental proposition, one with which the Neutral Chair fails to come to grips, is that the collective bargaining agreement, and especially its provisions with respect to accountability, must be perceived by the public as fostering and advancing the cause of legitimacy in policing in our city. Anything less impedes the ability of the Police Department to fulfill its mission. In our submissions on this issue to the Neutral Chair we strived to craft an arbitration option that satisfied this need, understanding that our insistence on the *status quo* would be deemed impermissible. The flat rejection of our proposals leaves us with no alternative but to dissent. Below I address four aspects of what we had proposed.

[3] Interim Award at 44-45.
[4] Interim Award at 56.

First and foremost is the question of whether the arbitration hearing (should there be one) addressing a separation or suspension in excess of one year should be open to the public. Our proposed language providing for transparency was attached to the Supplemental Interim Award in Appendix B. The City proposed that the arbitration hearing "shall be open to the public in the same manner as hearings before a hearing officer employed by the Board." We pointed out that the Police Board's Rules of Procedure mandate open hearings but specifically contemplate closed proceedings where appropriate, such as the pre-hearing conference and other occasions "for good cause shown". The Neutral Chair's response, candidly, is disappointing in the extreme: "Arbitrations are private and not open to the public. That again is the 'Rule of Law'."[5] The Neutral Chair goes so far to suggest that he would commit an "ethical violation" were he to provide that the arbitration hearings be open to the public.[6] We have deep respect for the Neutral Chair and his long history of accomplishments in the field, but this is nonsense. Every Police Board hearing in living memory has been open to the public and we are unaware of any horrible (or even mildly uncomfortable) consequence flowing from that. Neither is it the case that a police arbitration hearing open to the public is without precedent. San Antonio is the nation's seventh largest city. Its collective bargaining agreement with its police union directs that all arbitration hearings be open to the public.[7] There is no basis in experience or logic to believe that an arbitration hearing open to the public somehow becomes a flawed proceeding by virtue of being public.

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[5] Final Award at 20. This is more than a little reminiscent of the exchange in the Ring Lardner story, "*The Young Immigrunts*" (*sic*):

> "Are you lost daddy I arsked tenderly.
> Shut up he explained."

(Spelling and punctuation (or lack thereof) in the original)

[6] *Id.* at 21.

[7] Article 28, Section 10(c) of the 2022-2026 collective bargaining agreement with the San Antonio Police Officers' Association mandates that "All hearings shall be public unless it is expressly agreed in writing by the parties that the hearing shall be closed to the public." It can be accessed at https://www.sa.gov/Directory/Departments/CAO/Collective-Bargaining.

The Neutral Chair's prioritization of the private interests involved overlooks the vital public interest at stake in an open hearing. The Neutral Chair can make light of it all he wishes, but the fact remains that substantial portions of the citizenry are deeply suspicious of the process by which the Police Department seeks to hold its officers accountable on those occasions where they engage in misconduct. It is not sufficient for an arbitrator to say: trust me. Absolutely no good can come from a situation where the disciplinary process refuses to acknowledge this reality. For our part, the City stands willing to present our disciplinary cases in the bright light of day.

Second, we believe it a grave mistake not to require that arbitrators hearing such serious disciplinary matters first acquaint themselves with the training materials required of Police Board members pursuant to ¶542 in the Consent Decree. The required topics include constitutional and other relevant law on police-community encounters, including law on the use of force and stops, searches, and arrests; police tactics; investigations of police conduct; CPD policies, procedures, and disciplinary rules; etc. How does this training not enhance an arbitrator's ability to resolve these cases appropriately?

Third, the Neutral Chair engages in a radical restructuring of the *status quo* by requiring that officers remain on the payroll while the arbitration process is ongoing. We had proposed (if there is to be an arbitration option) continuation of the existing process, where a Police Board hearing officer determines whether to suspend (without pay) an officer against whom charges seeking separation have been filed. None of the City's 40-plus collective bargaining agreements provide for such a right. The Neutral Chair has created an incentive for the Lodge to find itself "unavailable" for arbitration hearings, knowing that the longer it can drag out the process, the longer the officer remains on the payroll. The Department cannot make use of officers while in this status; it would be preposterous to send an officer on an emergency call while simultaneously

seeking to terminate that individual's employment as a police officer. There is no unfairness in the City's position: in the event the arbitrator finds the separation not to be for just cause, she has the authority to fashion an appropriate remedy. But there is no remedy for the City when the arbitrator, many months later, determines that the separation *is* for just cause.

Fourth, we do not understand how the arbitration option is to be retroactive to September 14, 2022, more than a year before the date of the Final Award. We suggest this is unworkable and will only lead to confusion.

Finally, at the outset of this Dissent I observed that the Interim Awards will work to the detriment of police officers. That was not cant or rhetoric. It is a basic fact of life in Chicago (something which serves to distinguish us from other municipalities) that police officers, especially, are at risk of being named as defendants in civil lawsuits arising out of claimed misconduct. The fact that one has been named as a defendant, standing alone, is not proof of misconduct; that is what the judicial process is for. But that process relies on juries drawn from residents of Cook County. When the defendant officer confronts the jury, if that jury is composed of individuals who are skeptical of the integrity and legitimacy of the system by which the Chicago Police Department holds its officers accountable, the outcome of the process is not likely to favor the officer. Every CPD officer has a strong interest[8] in ensuring that the wider public accepts the credibility of the Department's disciplinary process. Each officer is entitled to a fair shake from the jury, and the best guarantee of that is a disciplinary process that is open and transparent. The

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[8] Most civil lawsuits include a claim for punitive damages against the defendant officer(s). Section 2-302 of the Local Governmental and Governmental Employees Tort Immunity Act provides: "It is hereby declared to be the public policy of this State, however, that no local public entity may elect to indemnify an employee for any portion of a judgment representing an award of punitive or exemplary damages." 745 ILCS 10/2-302.

Interim Awards work in the opposite direction. The result is bad for the City, for the officers, and for the residents of Chicago.

I dissent.

Cicely Porter-Adams
City Appointee

October 19, 2023